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ABSTRACT

This bulletin on criminal justice focuses on selected aspects of the U.S. legal system, including the police, the courts, and the prisons as well as on the protections and guarantees that reinforce the legitimacy of the U.S. legal process. Unit 1, "The Role of Law in a Free Society," is designed to enhance the awareness of students about the persuasive nature of law in their lives. The second unit, "Some Basic Features of Criminal Law," is an introduction to basic features of the criminal law of New York State. Examples which clarify the concepts are provided. Unit 3, "The Police," is designed to acquaint students with police practices and problems. The rights of individuals are outlined and a discussion of the more basic rules on the law of search and seizure is included. Unit 4, "The Courts," deals with the court in New York State. Unit 5, "Fair Trial and the Rights of Defendants," is devoted to a discussion of the rights of the accused. Unit 6, "The Penal System," describes what happens after sentencing. Unit 7, "Instructional Strategies for Law Studies," presents seven exemplary lessons in law-related education. Each unit concludes with a bibliography and an alphabetical listing of audio-visual materials. The units may be combined and incorporated into law-related courses as desired by the teacher. The bulletin concludes with a list of community resources which may be of assistance in furthering law-related education. (APG)

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LAW STUDIES: THE CRIMINAL JUSTICE SYSTEM

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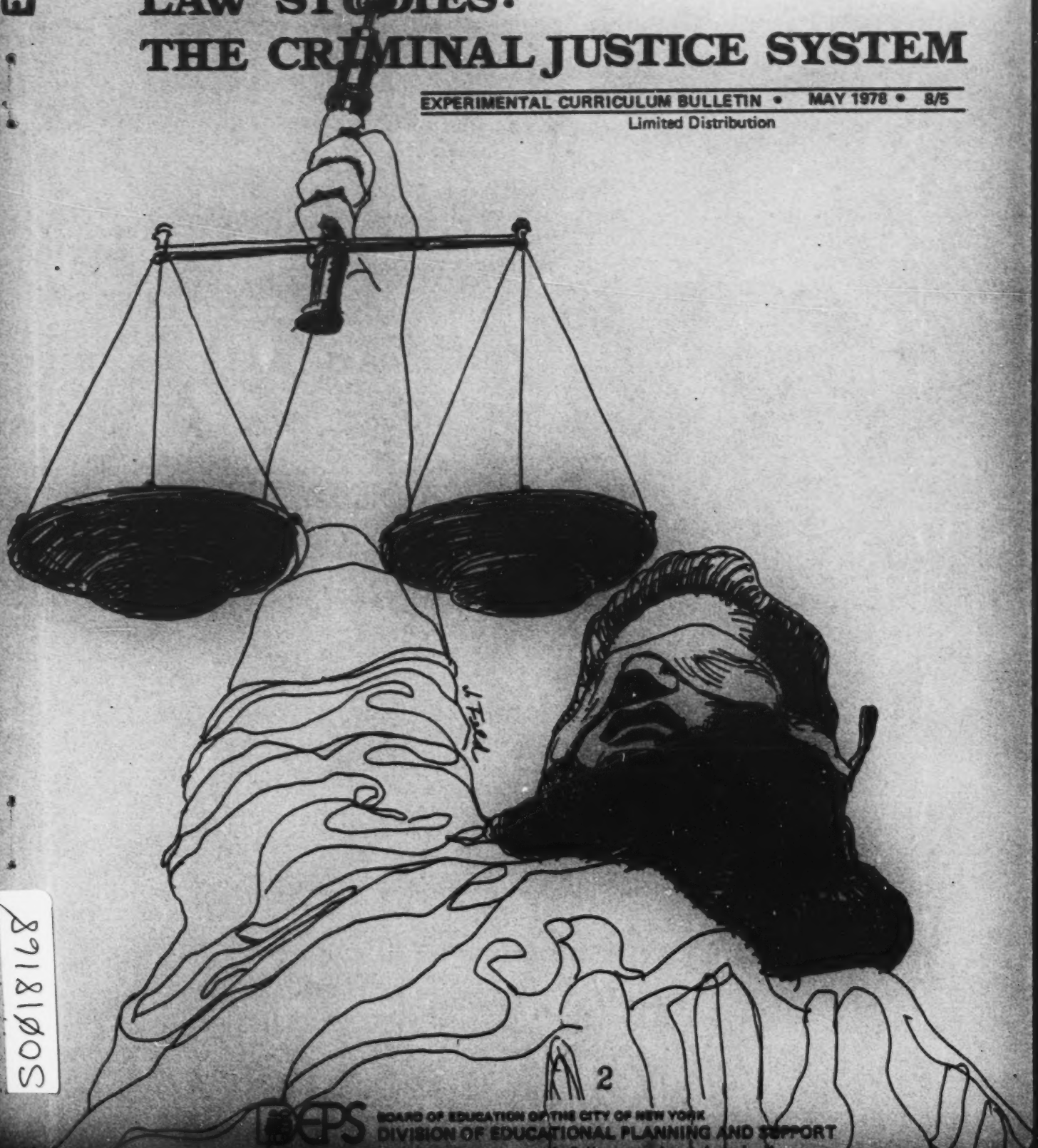

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FOREWORD

This curriculum publication is in response to a need to deal with the current widespread ignorance concerning the role and function of law in America. The negative attitude of some young people toward the American system of justice has become all too evident. An effective instructional program should promote a better understanding of our legal heritage and the significant role of law in a democratic society.

Law Studies: The Criminal Justice System focuses on selected aspects of the American legal system, including the police, the courts and the prisons, as well as the protections and guarantees that reinforce the legitimacy of the American legal process. The bulletin has been designed to help students become more knowledgeable about the law and more positive in their attitudes.

ARNOLD WEBB
Executive Director

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Florence Jackson, Center Director, Center for the Humanities and the Arts, and Charlotte Frank, Head, Curriculum Planning and Policy Unit, provided overall supervision.

Albert Post, Assistant Director, Center for Humanities and the Arts, guided the progress and directly supervised the project.

The first draft was developed by the following social studies teachers: Lloyd Borak, Gail Kamhi and Paul M. Meth, all from Martin Luther King High School.

The final version is the work of Dr. Daniel Finneran, Teacher Coordinator for the High School Division in the Institute for Legal and Criminal Justice Education in Secondary Schools, located at John Jay College of Criminal Justice.

Alaire Mitchell provided editorial assistance. Joseph Feld, Dissemination Unit, designed the cover.

How To Use This Bulletin

Introduction

This bulletin on criminal justice represents a collective effort of several persons and groups interested in promoting law-related education in the secondary schools. It does not purport to be an exhaustive, comprehensive treatment of all features of criminal law and criminal justice institutions. Much of what appears here is tailored to New York State law. It is hoped that this bulletin will be helpful to teachers who wish to become familiar with basic, salient legal concepts. At the end of each unit there is a bibliography and an alphabetical listing of audio-visual materials. Most of these books and materials have been endorsed by the American Bar Association for use by teachers, with the appropriate grade levels indicated.

Any combination of units or segments of units can be used, depending on what a teacher wants to do. For example, segments from all units might be usefully appropriated for lessons in Western civilization courses for the purpose of instruction about the development of constitutionalism and individual rights. A law-related course can similarly draw upon various combinations or simply concentrate on one of the units.

The first unit is designed to enhance the awareness of students as to the pervasive nature of law in their lives. The fundamental insight to be generated here is that law and legal processes are derivative, that is, they are the end product of cultural values and needs. In turn law is also part of the acculturating process.

The second unit is an introduction to basic features of the criminal law of New York State. It is hoped that the examples will clarify these concepts. Students can be made more aware of their own responsibilities as law-abiding citizens, of what kind of behavior is proscribed by the Penal Law, and of the penalities that can be imposed for various offenses.

The third unit is designed to acquaint students with police practices and problems. It also outlines the rights of individuals from the stage of confrontation with the police up to arraignment. Included is a discussion of the more basic rules on the law of search and seizure.

The fourth unit deals with the court in New York State. Included are descriptions of the roles played by various participants, such as the Legal Aid Society, jurors, and court officers. There is a discussion of the stages through which defendants move from arraignment to sentencing, and illustrations are given of rules of evidence and trial procedure. Students might also get a better understanding of what plea bargaining is and why, in so many cases, the prosecution resorts to plea bargaining.

The fifth unit is devoted to a discussion of the rights of the accused. Some elements of this subject are treated in more detail in other units. It is hoped that students will come to appreciate the extent to which safeguards have been erected to protect individual rights. The desired outcome is that students develop a respect for the necessity of balancing the rights of society and the rights of individuals.

The last unit describes what happens after sentencing. Included is a discussion of the limited but emerging law of prisoners' rights. Concrete examples are offered so that prison and parole experiences can be made more vivid to students.

In addition to the bibliographies and listings of audio-visual materials at the end of the units, there is a list of some community resources which may be helpful to teachers. This list is suggestive, not exhaustive, of the possibilities for assistance being offered in the growing movement to further law-related education.

Legal Research

A few pointers here may be helpful for teachers who wish to do research or who would like to encourage students to do independent work. A good library such as the one at John Jay College of Criminal Justice contains extensive and up-to-date resources, and also provides assistance to researchers.

Supreme Court Cases.

The official edition is called the United States Reports. The first 90 volumes contain the names of the court officers who reported the cases, e.g., 3 Cr. 242 refers to the third volume of those cases reported by reporter William Cranch. From volume 91 until now (current volumes are in the 400's) the first number gives the volume, followed by U.S., and then is followed by the page number for the case.

Very recent Supreme Court cases can be found in a standard publication such as The United States Law Week.

Cases From Other Federal Courts.

Decisions of the Courts of Appeals and District Courts are contained in The Federal Reporter. From 1924 to date, these cases are reported in the second series, cited as: F 2d.

Federal Legislation.

The texts of all general, permanent laws of the United States are contained in United States Code (cited as "USC 1970 ed."). Pocket supplements in the back keep the reader up to date. The United States Code Congressional and Administrative News, published semi-monthly, keeps the reader informed of the current legislation of Congress.

New York State Law Reports.

The most useful sets of reports (each in 2 series) are the Appellate Division Reports and the New York Reports. The latter gives coverage of cases heard in the Court of Appeals, the highest judicial body.

App. Div. Reports 1-286 cover 1896-1955 and are cited as App. Div. The second series, from 1956 to date, is cited as AD 2d.

New York Reports 1-309 cover 1847 to 1956 and are cited as NY. The second series, from 1956 to date, is cited as NY 2d.

New York State Legislation.

Comprehensive coverage is found in McKinney's Session Law News of New York (cited as "NY Laws") and in McKinney's Consolidated Laws of New York; Annotated (1969), with updating through pocket supplements.)

New York City Local Laws. The laws passed by the City Council are published in their entirety in the City Record. All agency rules and regulations are contained in the Cumulative Compilation of the Rules and Regulations of New York City Agencies.

UNIT I - THE ROLE OF LAW IN A FREE SOCIETY

A. What is law?

"Law" refers to rules which regulate behavior and the allocation of resources, and which society has decided are ultimately enforceable in its courts.

B. What situations listed below are applicable to present-day law?

John agrees to meet Mary for a dinner date but "stands her up" instead. (Inapplicable. The courts will not enforce mere social agreements.)

Ronald and his mother-in-law get into a heated argument in front of a crowd of people. Ronald calls her a "witch," thumbs his nose at her, and walks away. (Inapplicable. There has been no physical violence and it is not considered slander in our times to call someone a "witch.")

Derek, who is 7'8" tall, is refused service in a restaurant because the owner doesn't want his regular customers to be intimidated by seeing Derek there. (Applicable. Public accommodations such as restaurants and hotels cannot refuse service on unreasonable and arbitrary grounds.)

Robert tells several persons that he thinks the President of the United States is a dangerous fool and should be assassinated. (Inapplicable. This is an example of speech which does not create a "clear and present danger" of violent action, and is therefore protected by the First Amendment).

Robert writes a letter to the President, threatening to assassinate him if he doesn't change his foreign policy. (Applicable. Direct threats upon the life of the President are forbidden by federal statute.)

Jim complains to his landlord that he is not getting any hot water, but the landlord says that it is his house and he can shut off heat and hot water if he wants to. (Applicable. The law creates property rights in the tenant for which he pays rent. In New York since 9-1-75 there is a statutory "warranty of habitability" which gives tenants cause for action against a landlord who does not provide essential services such as heat and hot water.)

Evelyn, who makes $30,000 a year is told by the bank that she can't get a loan because she is a woman. (Applicable. Federal and state statutes prohibit sex discrimination by lending institutions.)

Pete, who is a veteran, has been told that his G.I. Bill benefits have been cut off because he made an anti-war speech on the campus last week. (Applicable. Denial of his benefits under these circumstances is violative of his First and Fifth Amendment rights.)

Bill Smith is turned away by the groom from a wedding reception, even though the bride invited him, because the groom has discovered that Bill's mother is Chinese. (Inapplicable. Purely private social occasions are beyond the reach of civil rights laws and the Constitution.)

Roslyn is told that she must sit in one section of the public library because she is Black. (Applicable. Violates rights guaranteed by the Fourteenth Amendment and civil rights statutes.)

C. In what ways do laws vary?

1. Laws are different in different societies.

In the U.S. opium may be grown only under license for medicinal purposes and not at the will of the farmer.

Cock fighting is illegal in New York City but legal in Haiti.

In the United States addicts may not use heroin. But in England the law allows them to get maintenance doses.

2. Laws vary within a particular society.

It is illegal to smoke marijuana in your own home in New York State, but not illegal in Alaska.

The laws of some states, e.g., Utah, allow capital punishment; in other states, there is no capital punishment, e.g., Idaho.

D. What are the basic differences in philosophy which affect the kinds of laws people want?

Thomas Hobbes was a 17th century English philosopher who believed most people would be evil if given a chance. Therefore only a strong government, strictly enforcing its laws, could make civilized life possible. Those who hold this view of humanity tend to stress the rights of society.

John Locke, a contemporary of Hobbes, believed that most people were basically good, but without laws they would be victimized by a few bullies (as in a typical Western movie). This view of humanity holds that representational government is the best way to create law. Those who share this view tend to stress individual rights.

B. Why do we need laws?

1. Society cannot operate effectively without laws.

The feudal system of the Middle Ages in Western Europe came about because of the collapse of the Western Roman Empire, with its far-flung system of law (the Justinian Code). The Church attempted to regulate behavior and rights with its Canon Law. But it lacked power to enforce its law if local rulers did not care to follow Canon Law decisions. There was much violence and commerce was greatly diminished because people were afraid to travel. Cities disappeared. Hundreds of small enclaves became the only real source of law.

Perhaps this is comparable to what life would be like if the people of New York City had only local groups to turn to for protection. High rates of crime in our cities are making life unbearable for many people.

2. Law is designed to provide for the peaceful resolution of disputes.

People come into conflict in many ways even with the best of good will. Without law, "might makes right," would be the principle for deciding disputes in many areas.

Examples:

marriage, divorce, and child custody rights

inheritance rights

ownership and boundary lines of property

employment agreements

landlord-tenant rights

Even outside the legal system people often want to abide by rules.

Examples:

sports events, with umpires or referees

private organizations operating according to parliamentary procedure

family rules for sharing responsibilities

rules in schools, designed to provide a safe, calm, and fair atmosphere for learning

3. Law is designed to provide certainty and predictability as to the consequences of people's actions.

The prohibition against ex post facto legislation assures people that they will not someday be punished for what they are legally doing today.

People can make long-range plans if they know what their rights and obligations are.

Outside of the legal system people also expect fair, consistent treatment.

Examples:

Students expect their teachers to be fair and consistent.

Children whose parents are too often inconsistent and unfair are likely to develop serious psychological problems.

We usually prefer the "Golden Rule" in our dealings with others. ("Do unto others...")

4. Law is designed to provide a means of redressing and compensating injury.

Under the "civil law" the victim of deliberately or negligently caused harm can sue the perpetrating party for money damages. If he dies because of the injury his family may be able to bring a successful action for "wrongful death."

An injured party can seek a court order (usually called an injunction) for redress when money alone will not suffice. This aspect of civil law is called "Equity" and the remedies obtained are called "equitable remedies."

Examples:

Despite a valid contract to sell a parcel of land, the seller changes his mind and offers to return any money advanced by the buyer. If the buyer still wants the land he can go to court, and the latter will compel the seller to transfer the land to the buyer (decree of specific performance).

A professional photographer keeps harassing a famous person, popping up out of nowhere so that her children are often frightened and upset. A court order may be obtained, restricting how near the photographer can be to her. Onassis v. Gallela .

Some injuries are seen as an assault upon society itself (criminal law). The means of redress, upon adjudication of guilt, consist of some deprivation of property or liberty or, even, life.

Resort to law is meant to keep individuals from violent acts of retaliation ("taking the law into one's own hands").

5. Law can change as values change.

Law has sometimes been very harsh to individuals and less powerful groups in society.

Examples:

The Roman father had the power of life and death over members of his family.

The Code of Hammurabi provided for punishment of crimes by having the same or nearly the same injury inflicted on the perpetrator.

The U.S. Supreme Court in the Dred Scott case held that slaves were property and had no rights. 19 HOW. 393-1857.

There are countless examples around the world where, even today, law and its methods of enforcement are harsh or tyrannical.

Throughout history, and even in the same societies mentioned above, law has also been aimed at protecting the weak.

Examples:

Justinian Code

Code of Hammurabi

Amendments of U.S. Constitution

Law in recent years has changed to accommodate new values and attitudes.

Examples:

abortion—Roe v. Wade , 93 S. Ct. 705 (1973)

contraception—Griswold v. Conn., 381 US 479 (1965)

no-fault divorce—state statues, e.g., Fla., Calif.

school desegregation—Brown Case 347 US 483 (1954)

civil rights laws—1964 Civil Rights Act

As older and newer attitudes and values conflict, many people see law as laggard and in need of change in many areas.

Examples:

drug laws

prostitution laws

homosexuality laws

Sunday closing laws

Law never operates in a vacuum.

The same terms may be interpreted differently in time, e.g., "interstate commerce."

Modern industrial society has brought new needs and new legal responses.

Examples:

workmen's compensation

National Labor Relations Act

social security

anti-pollution laws

F. How does society get its law?

1. Constitutional law comes from the federal and state constitutions.

Federal courts interpret the Consitution of the United States.

Each state's constitution is the highest law of that state.

In case of conflict between a state and the federal government, the United States Constitution prevails over a state's constitution or law. Marbury v. Madison, 1 Cr. 137 (1803).

2. The President can make treaties and executive agreements.

In case of conflict between a state law and a treaty or Presidential Executive Agreement (with regard to other countries), the state law must yield.

But the treaty or Presidential Executive Agreement must not violate the United States Consitution. Missouri v. Holland, 252 US 416 (1920).

3. Legislation, within the boundaries of the Constitution, is enacted under a federal system.

National legislation emanates from the Congress. The process of enactment involves Congress (House of Representatives and the Senate) and the Presidential veto power, which can be overridden by a 2/3 vote of both branches of Congress.

State legislation emanates from the state's legislature (usually having 2 branches). In New York this consists of the Assembly and the Senate. The Governor's veto can be overridden by a 2/3 vote of both branches of the Legislature.

Local legislation is given its scope by what the state constitution and legislature will permit. In New York City the City Council is the law-making body.

Legislation is the one source of law most directly amenable to popular control. Theoretically, the people, if they form an overwhelming and coherent majority, can change through legislation all other sources of law, including the Constitution.

4. Administrative law is a vast body of rules which have legally binding effect but are made by administrative (regulating) agencies.

These agencies have been empowered by Congress to make rules, enforce them,and hold hearings in which violators may be penalized. They are sometimes referred to as the "fourth branch of government."

Legislative bodies have given this authority to these agencies because the latter have the expertise to deal with thousands of detailed, complex situations which arise within the broad scope of statutes. Outrageous abuses by administrative bodies <u>can</u> be appealed to the courts.

Examples:

granting of licenses

activities of regulatory commissions such as the ICC, FCC, FTC, FDS.

eligibility hearings as to welfare or social security benefits

certification of a union to represent a group of workers

5. Presidential Executive Orders such as the one requiring the racial integration of the Armed Forces or loyalty investigations of Federal employees, also provide laws.

6. The courts provide law as they render decisions and write opinions and incidental comments (obiter dicta).

Courts try to adhere to precedent in applying the law to cases before them. That is, they try to apply similar rules of law to analogous cases. Sometimes this does not work, i.e., the pattern in a case raises novel issues. In deciding such a case, a new precedent may be created.

Courts often have to interpret the meaning of new statutes in deciding cases. New law is created in this way.

Courts sometimes reverse an earlier decision and create new law. An example is the United States Supreme Court's decision that racial segregation was inherently unequal in Brown v. Board of Education; 347 US 483 (1954). This decision reversed the idea of "separate but equal" held in Plessy v. Ferguson; 163 US 537 (1896).

G. What is the basic system of our courts?

1. There are trial courts and appellate courts.

In a trial court both parties present their sides of a law suit. The judge or a jury decides the case.

In an appellate court the party which lost in the trial may be able to make a successful appeal on the ground that there was a significant error in the interpretation of law or that some important procedural protection was erroneously withheld in the trial court below.

2. There are federal, state and local (municipal) courts.

Most cases are resolved in state and local courts.

Federal courts have complex rules (based on the Constitution and federal statutes) to determine if a federal court has jurisdiction (right to try a case).

3. The federal court system (disregarding special bodies such as the Tax Court) has three levels.

The Supreme Court, consisting of 9 Justices, is the highest judicial body in the land. It strikes down federal and state legislation which it finds to be unconstitutional, but only when cases have come before it, on appeal, which involve such legislation. Similarly, it can reverse decisions made by administrative bodies.

The Supreme Court has had and still has a profound effect on American life and the law. Sometimes it has reversed its own earlier decisions, thus vividly illustrating how law changes along with society.

The second level of the federal judiciary consists of a Court of Appeals in each of 10 circuits plus Washington, D.C. New York State is within the Second Circuit.

On the third level are the federal district courts in each of the states. In New York City there are the Southern District Court (including the counties of Bronx and Manhattan) and the Eastern District Court (Kings, Queens, Richmond).

4. New York State has its own system of courts.

The Court of Appeals is New York State's highest court. It renders decisions on cases which have been appealed from the lower state courts.

Below the Court of Appeals is the Appellate Division with four judicial districts.

The Supreme Courts of each county are under the Appellate Division.

There are many municipal courts in New York City. (These are presented with more detail in Unit IV).

H. How does society change the laws if people believe that those laws are morally wrong?

1. Political pressure can affect the law.

Courts may respond to executive or legislative pressure. For example, the Supreme Court began to interpret New Deal legislation more favorably after President Roosevelt proposed to enlarge the Court's size and appoint additional justices.

Legislators and some judges must face elections. If their actions do not reflect the views of those who can elect them, they will lose their offices.

2. Social pressure can affect the way laws are enforced.

In the long run law is rooted in the people. When there is consensus in favor of a law it will be effectively enforced, e.g., conscription in World War II. When there is deep disagreement, enforcement becomes difficult and a spirit of contempt for the law may be generated, e.g., the problems of Prohibition.

This attitude continues today. There is lax or non-uniform enforcement of laws regarding:

acts of gambling

prostitution when practiced by call girls

marijuana smoking (done by millions)

Note: Illegal sexual behavior between husband and wife (specified by "blue laws") is almost never enforced.

Enforcement and prosecution of offenses in these areas is less effective for several reasons.

Many people consider these "victimless" crimes.

Large numbers of people commit these illegal activities, often with little feeling of guilt.

Law enforcement staffs are limited in size and funds and, therefore, concentrate on other types of crimes.

Many "search and seizure" problems arise, especially in drug usage cases.

There are tempting opportunities for corruption of the police in this type of crime.

3. Civil disobedience can arouse pressure to change laws.

Those who protest what they believe is an unjust law proceed to disobey it in a non-violent manner, and then accept the legal consequences. Antigone (heroine of an ancient Greek play) is an early literary example of someone who dies to assert that individual conscience is the highest law.

There are many people who have used civil disobedience to follow their own consciences and helped to create change.

Examples:

Henry David Thoreau

Mahatma Gandhi

Martin Luther King

4. When social and political pressures grow strong enough the law will be changed through the legislature or by the courts.

I. What are some of today's controversial legal issues?

drug usage

abortion

gambling

prostitution

homosexual rights

busing to achieve school integration

draft resistance during the Viet Nam War

amnesty

affirmative action programs for the hiring of women and minority group members

blood transfusions for the children of Jehovah's Witnesses

J. What is necessary for solutions to such social questions?

Political compromise is a necessary art. It dulls the edge of conflict and makes laws more palatable to competing interest groups.

An informed and interested public and open access to the political arena are necessary for the integrity of the law. Our society's many sources of law provide many ways to change and compromise. If these ways become closed to the people, the only source of law may be the will of a dictator.

Unit I - The Role of Law In A Free Society

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    79 strategies to help students become aware of their values.

14. Starr, Isidore, Louis Paul Todd and Merle Curti, eds. Living American Documents. Harcourt, Brace Jovanovich, Inc. (1961), $1.65, 358 pp.; paperback; text, grades 9-12.

    Source book with 80 documents and background material for each.

15. Switzer, Ellen. How Laws Are Really Made and How They Work. McDougal, Littell and Company (1974), $3.20. 192 pp; paperback; text; grades 10-12.

16. Weitzman, David and Richard E. Gross. Rules, Rights, and Revolutions (The Human Experience: World Culture Series). Houghton Mifflin Company (1974), $2.80. 84 pp.; paperback; text; grades 6-12.

    Considers the origins of law and discusses laws and forms of justice in other cultures and times. Also examines civil disobedience.

Audio-Visual Materials

1. How Law Develops. Lex Singularis series. Academic Support Center, (KET-RV, The Missouri Bar, 1973). Videotape, 29 minutes. Sale: $50.00 (cassette or reel-to-reel); rental: $5.00 (cassette only)., Grades 7-12.

2. In Search of Justice. Charles E. Merrill Publishing Company (Law in American Society Foundation, 1975).
   8 sound filmstrips (with cassettes only), 30 student activity booklets, guide, 12 min. each.; grades 7-12. Sale: $137.00

3. Is It Always Right To Be Right? Stephen Bousustow Productions (1969). 16 mm. film, guide, 8 min. Sale: $130.00; rental: $15.00. Grades 5-12.

4. Law and Justice: Man's Search for Social Order.
   Center for Humanitees, Inc. (1972). Sound slides, guide, 37 min.; grades 9-12. Sale: $97.50 (with records or cassettes).

5. Man and the State: The Trial of Socrates.
   BFA Educational Media. 16 mm. film, 29 min.; grades 7-12. Sale: $375.00; rental: $30.00.

6. My Country Right or Wrong? Searching for Values series. Learning Corporation of America (1972). 16 mm. film, guide, 15 min; grades 7-12. Sale: $270.00; rental: $25.00.

7. Where Our Rights Come From. Lex Singularis series. Academic Support Center. (KETC-TV, The Missouri Bar, 1973). Videotape, 29 min., grades 7-12. Sale: $50.00 (cassette or reel-to-reel); rental: $5.00 (cassette only).

8. Why The Law. Lex Singularis series. Academic Support Center. (KETC-TV, The Missouri Bar, 1973). Video tape, 29 min.; grades 7-12. Sale: $50.00 (cassette or reel-to-reel); rental: $5.00 (cassette only)

UNIT II - SOME BASIC FEATURES OF CRIMINAL LAW

Note: Unless otherwise stated, this unit follows current New York State Penal Law for 1976-1977:
P.L. = Penal Law of New York
C.P.L. = Criminal Procedure Law of New York
U.S.C. = United States Code

A. What is an offense?

An offense, as defined by statute, is a wrong to the public. It is an act or omission which is prohibited by law and which may be prosecuted by the state or some political subdivision of the state.

B. How are offenses classified?

1. Crimes are one class of offenses; crimes are divided into felonies and misdemeanors.

Felonies are offenses for which the maximum term of imprisonment is more than one year.

Examples:

murder

manslaughter

robbery

rape

larceny

arson

burglary

Misdemeanors are offenses for which the maximum terms of imprisonment range from over 15 days to 1 year.

Examples:

refusal to pay restaurant bill or subway fare ("Theft of Services")

"borrowing" someone's car, without his consent, for a few hours ("Unauthorized Use of a Motor Vehicle")

tampering with a gas or electric meter ("Theft of Services")

accosting someone in a public place with intent to swindle him in a confidence game ("Fraudulent Accosting")

possessing an amount of marijuana less than 1/4 of an ounce - less than 25 cigarettes (Class A misdemeanor with a maximum term of imprisonment of one year)

2. Violations are the least serious infractions of the criminal law. The maximum term of imprisonment is 15 days, but in most cases the punishment is a fine.

Examples:

obstructing traffic, using obscene or abusive language in a public place, frightening subway passengers by very loud and tumultuous behavior ("Disorderly Conduct")

shoving or kicking someone in the shins on a bus, slapping someone across the face ("Harrassment")

wandering around in a public place for the purpose of begging ("Loitering")

appearing in a public place under the influence of alcohol or a drug and behaving in a manner that endangers oneself or disturbs others ("Public Intoxication")

traffic offenses

Note: Imprisonment is sometimes meted out to persons in civil cases. It is important to distinguish such punishment, based on defiance of judicial orders in civil court proceedings (e.g., refusal to pay alimony, or refusal to obey an anti-strike injunction) from punishment under the penal law. Such persons are not guilty of penal offenses and are confined in separate institutions.

C. What are the basic elements constituting a crime?

1. The corpus delicti must be established. That is, it must be shown that a specific kind of crime has occurred, and that it was not accidental. (Contrary to popular belief, prosecution for murder does not require that the victim's body be found; eyewitness testimony that a victim was thrown to the sharks can be evidence enough for a conviction.)

2. There must be a mens rea, that is, the showing of a criminal state of mind (mental culpability) on the part of the person accused of committing the crime.

Examples:

A person shown to be suffering from mental disease or defect does not have mental culpability if he is substantially unable to know or appreciate the nature and consequence of what he did or that it was wrong.

There are other defenses which can be raised to negate mental culpability, such as duress, justification, or infancy.

Mens rea still exists if the accused intended to harm A by his act, but harmed someone else instead (wrong person gets into the booby-trapped car). This is an application of the doctrine of "transferred intent," which in both civil and criminal law is the presumption that intent to harm one victim was transferred to another victim of the tortious(wrongful) behavior.

3. Criminal recklessness and criminal negligence are sometimes substituted for mens rea. Punishment may be imposed if it is proven, in some offenses, that the accused acted with such a gross lack of care that he practically intended the consequences which ensued ("criminal recklessness"). In other cases mental culpability is found when a person is so negligent that he fails to perceive a substantial and unjustifiable risk in what he is doing ("criminal negligence").

Examples:

Smith fires his rifle at a passing train. The bullet kills a passenger. He is chargeable with homicide. He was criminally reckless.

Jones, who is intoxicated, drives his car in and out of different lanes at 80 m.p.h. He crashes into another car, killing its occupants. He can be charged with vehicular homicide. Drunkenness is no defense. He was criminally reckless.

A person playfully waved a loaded gun at someone else, and believing that the safety catch was on, pulled the trigger. The safety catch was actually defective and the gun went off, causing death. The jury held this to be criminal negligence (Claudine Longet case).

4. The prosecution must show a causative connection between the accused's mental culpability and the particular crime which was committed.

Example:

Smith sticks pins into a doll which resembles his rival, Jones. Soon afterward Jones is found dead from puncture wounds. Smith cannot be prosecuted for murder merely because he performed this ritual act.

D. How are felonies classified?

Note: Brief definitions of the important felonies are given in this section. It would not be feasible to elaborate on the distinctions within each felony which exist in the New York Penal Law. (Misdeameanors are also grouped in classes according to degree of seriousness).

1. Felonies fall into various classes, whose maximum penalties are as follows:

Class A1: mandatory death penalty - (P.L. Sec. 125.27)

Class A1 (all others): life imprisonment

Class A2, A3: maximum of life

Class B: maximum of 25 years

Class C: maximum of 15 years

Class D: maximum of 7 years

Class E: maximum of 4 years

2. A particular type of felony such as grand larceny may fall into different classes, depending upon the statutorily designed degree (seriousness) of the criminal behavior known as larceny. Thus, Grand Larceny, First Degree is a Class C felony. The most one can get for Grand Larceny is 15 years. Grand Larceny, Third Degree, is a Class E felony with a maximum penalty of 4 years.

The first degree of a felony is reserved for the worst criminal behavior. Match the first degree of a felony with its class designation in the Penal Law. From that class designation one immediately sees, looking at the list of maximum penalties above, how far New York will go in punishing a particular felony. For example, First Degree Robbery is a Class B felony and thus is more seriously punished than First Degree Larceny.

E. What felonies are of offenses against property?

1. Grand Larceny. This is stealing. In the first degree it is extortion. This applies where someone forces another to give up property by threatening in the future to cause physical injury, or to damage property, or to misuse a public position to the victim's detriment.

2. Robbery. This is forcible stealing. There is an immediate use of force or threat to use force in order to obtain the victim's property.

3. Burglary is committed if the perpetrator enters or remains in a building unlawfully, and with intent to commit a crime therein. It is not necessary that his entire body be inside the "building" (which can be someone's fishing boat).

   In first degree burglary the invasion must occur at nighttime in a dwelling, with one of the following elements added:

   He carries explosives or dangerous weapons
   There is physical injury
   There is the use, or threat of use, of a dangerous instrument (baseball bat, scissors, etc.).

   Examples:

   Smith walks into a restaurant during business hours and steals tips left on the tables. There is larceny but no burglary because Smith did not enter unlawfully.

   Smith, a nonstudent, slips into a school building during regular hours without getting the required consent of the school's authorities. He intends to "shake down" some of the students for money, and does so. He has committed burglary, but not of the first degree.

4. Criminal trespass is committed when someone enters premises (building or any other real property) or remains on premises knowing that it is unlawful to do so. He has, however, no provable intent to commit some other crime, and thus cannot be charged with burglary. Only first degree trespass is a felony (Class D) which requires that one or more of the following elements be present:

The trespasser has a firearm and some usable ammunition;

He knows that his confederate has a firearm and usable ammunition;

He has explosives or a deadly weapon (switch-blade, gravity knife, firearm silencer, etc.);

He knows that his confederate has explosives or a deadly weapon.

5. Criminal possession of stolen property is committed when the perpetrator has knowledge that the property was stolen. There must be intent to keep it from the rightful owner for the benefit of the perpetrator or someone else. A first degree felony (Class D) has been committed if the value of the property in question exceeds $1500.

Examples:

Smith knows that his friend just stole a new car, but promises to keep it hidden in his garage for a few days. This is first degree criminal possession of stolen property.

Smith has a change of heart as soon as his friend leaves the garage. Three hours later, he notifies the police so that the car can be returned to its owner. Under the circumstances, Smith has made a timely renunciation of his criminal intent and has an excellent defense against prosecution.

6. Criminal facilitation applies where a person has no intent to commit a crime, but knowingly renders aid to someone else who intends to commit a crime. The former person is not an accomplice of the latter because he is not rendering aid with the specific intent that the crime be committed.

Example:

Smith owns a gun store. Jones comes into his shop, muttering furiously that he is going to "fix" his girl friend, who has, he says, been seeing someone else. Smith knows that Jones has a reputation for violence. Nevertheless Smith sells him a pistol and ammunition. Later that day Smith hears that Jones shot his girl friend and his rival. Smith is chargeable with criminal facilitation.

7. Criminal mischief is intentional or reckless damage done to another's property. Remember that "reckless" means a gross deviation from the standard of conduct of a reasonable person in the situation.

If intentional property damage exceeds $250, or reckless property damage exceeds $1500, felonious behavior can be charged. Criminal Mischief, First Degree (Class B felony) occurs when the damage is caused by an explosive. The amount of damage is then irrelevant.

Examples:

Smith throws a rock at Jones. It misses Jones but smashes a window which costs over $250. Smith has committed Criminal Mischief, Fourth Degree, a Class A misdemeanor.

Smith puts a time bomb in Jones' car. It malfunctions and in a small blast causes minor damage to the carfabric within a radius of a few inches. Smith has committed Criminal Mischief, First Degree, which carries a maximum penalty of 25 years' imprisonment.

Smith sets fire to a group of motorcycles in an outdoor lot which are worth over $1500, and destroys them. This is Criminal Mischief, Second Degree (designated as a Class D felony).

8. Arson is a special kind of property damage. It is different from criminal mischief because it applies to property damage done to buildings by fire or explosives. Arson, even in its mildest form, is never considered to be capable of treatment as a misdemeanor the way criminal mischief is.

The word "building" means the same thing for both arson and burglary, any structure used by people for overnight lodging or for carrying on business inside. It can be applied to trailers, fishing boats, airplanes, school and office buildings, factories, homes, etc.

What is required at the least is that a fire was intentionally set with a conscious disregard of a substantial and unjustifiable risk that damage would result. In other words a person who damages a building as a result of intentionally and recklessly starting a fire or causing an explosion has committed Arson Fourth Degree (a Class E felony).

Arson, Second Degree (a Class B felony) is committed when a person intentionally damages a building by fire and another person (not helping him) is in the building and the perpetrator knows this or should reasonably know this.

Arson, First Degree is like Arson, Second Degree except that the damage is caused by explosion rather than fire. It is a Class A-1 felony.

9. Criminal tampering, First Degree occurs when a person tampers with a public utility instrument and causes substantial impairment of service. In the first degree it is a felony (Class D). The maximum term of imprisonment for Class D felonies is 7 years.

Examples:

sending in false fire alarms

breaking public telephones or parking meters

F. What felonies are offenses against the person?

1. Assault is an offense against the person. There usually must be serious physical injury, which results in substantial pain or impairment of physical condition (a shove or slap falls under "harrassment," a violation). And there must be no provable intent to cause the death of another. If there were, and no death occurred, there would be a charge of attempted murder.

Assault, First Degree occurs when someone is intentionally maimed or disfigured permanently; or when serious physical injury is inflicted by use of a dangerous instrument (any object which in the circumstances woild cause such injury) or a deadly weapon; or when serious physical injury is inflicted under circumstances indicating a depraved indifference to human life; or when an innocent person is seriously injured during the course of an attempted or committed felony or in the immediate escape by the felons from the scene thereafter. Assault, first degree is a Class C felony (maximum imprisonment of 15 years).

Assault is a misdeamonor when the physical injury, caused intentionally or recklessly or with criminal negligence, is not serious. At this level it is called Assault, Third Degree with a maximum penalty of one year of imprisonment.

Examples:

Smith slaps Jones across the face. No assault; this is a violation (harrassment) with a maximum penalty of 15 days in jail.

Smith attacks Jones with his fists and punches him a few times before he is restrained. Jones is treated at the hospital, is released and is fully recovered in two weeks. Smith committed Assault, Third Degree, a misdemeanor.

Smith knocks bystander Jones down as he flees with the proceeds of his just completed bank robbery. Jones is injured, but not seriously. Smith committed Assault, Second Degree, a Class D felony (7 years maximum).

Same situation, however, Jones was seriously injured. Smith is chargeable with Assault, First Degree.

Smith puts a "knock-out" substance in Jones' drink, and Jones is rendered unconscious. Assault, Second Degree.

2. Homicide is behavior causing someone's death: murder, manslaughter, criminally negligent homicide and illegal abortion. It is never designated as less than a felony.

Criminally Negligent Homicide is a Class E felony (maximum of 4 years' imprisonment). It occurs most often in the reckless or negligent operation of a motor vehicle.

Manslaughter includes behavior that was not intended to cause but did cause death. But it also includes the situation where the accused intentionally caused or aided another person to commit suicide (Manslaughter, Second Degree, a Class C felony). It includes actions causing death where the perpetrator was acting under extreme emotional disturbance (Manslaughter, First Degree, a Class B felony).

Examples:

Smith performs an abortional act which is not protected by or justifiable under the law. The woman dies. Manslaughter, Second Degree.

Note: An abortion is permitted in New York within the first 24 weeks of pregnancy. Thereafter it may be obtained with the consent of a duly licensed physician who has a reasonable belief that it is necessary to save the woman's life.

Joe the Loanshark intends to cause serious physical injury to Don Debtor's wife. He beats her and she dies from these injuries. Manslaughter, First Degree.

Murder requires the intent to cause the death of another, or else reckless conduct which, creating a grave risk of death to another, causes the death of another person.

Examples:

Smith, having good reason to know that somebody might be in a certain building, sets it afire anyway. A hobo is found dead from the fire. Smith committed Murder, Second Degree (a Class A-1 felony).

Smith and his confederates are engaged in or are attempting to commit a certain felony. In the course of such crime or of their flight from the scene, he or a fellow participant causes the death of a non-participant. The participants are chargeable with felony murder (Murder, Second Degree). Not all felonies qualify, but the list of those that do is extensive:

robbery
burglary
kidnapping
arson
rape, first degree
sodomy, first degree
sexual abuse, first degree
escape, first and second degree

Smith, aged 19, kills a policeman who is in uniform or who announced that he was a police officer. Murder, First Degree; maximum penalty is death - CPL 1.20 (34).

3. Sex Offenses are felonies which include various degrees of rape, sodomy and sexual abuse. The most important for a necessarily selective outline such as this are the rape felonies, which constitute a major area of violent crime and are of fundamental concern to the women's movement and to all of us.

Note: "Sexual intercourse" occurs upon any penetration in the ordinary sense.

Rape, Third Degree is a Class E felony. This occurs when a man aged 21 or over engages in sexual intercourse with a female who is from age 14 to just under 17. This is a "strict liability" offense where the man cannot offer as a defense that he sincerely believed she was older.

Another situation is also covered: when the female is 17 or over but is so mentally defective as to be deemed incapable of understanding what is happening, and the male knows and takes advantage of this fact.

Note: A young man under 21 cannot be charged with a felony for having sexual intercourse with a female between 14 and 17. He can be charged with a Class A misdemeanor, a sexual misconduct (maximum penalty of one year's imprisonment).

Rape, Second Degree is a Class D felony. This occurs when a male who is 18 or older has sexual intercourse with a female less than 14.

Rape, First Degree is a Class B felony . This felony is committed when a male engages in sexual intercourse with a female by use of forcible compulson, or when the female cannot give consent because she is physically helpless, or when the female is less than 11 years old.

Note: The felonious degrees of sodomy run parallel to the degrees of rape in terms of ages of people involved, use of forcible compulsion, and punishment. The victim can be of either sex and the sexual intercourse is "deviate." Consensual sodomy is classified as a Class B misdemeanor, with a maximum penalty of 3 months in jail.

Corroboration (Section 130.16 of Penal Law) may not be necessary in some cases of sexual abuse. There may now be a conviction for sexual abuse, sodomy, or forcible rape solely on the basis of the complainant's testimony, if the jury is persuaded by it. Formerly there had to be other evidence in addition to complainant's testimony. The complainant can still be cross-examined at length on aspects of previous sexual life which are deemed to be relevant to the complainant's credibility.

There are exceptions where independent corroboration is required as evidence and must be introduced at trial, or else the case will be dismissed: in consensual sodomy cases (less frequently prosecuted nowadays) and in cases where the alleged victim was legally incapable of giving consent because of being under 17 years of age or because of mental defect.

4. Kidnapping is a First Degree Class A-1 felony if the perpetrator abducts a person and compels someone else to pay ransom, or to engage in or refrain from certain conduct. The victim must be held for more than 12 hours; but if he dies sooner, then the 12-hour period disappears as a requirement. Under certain circumstances there is a legal presumption of death of the victim.

5. Unlawful Imprisonment is a felony against the person which involves restraint as opposed to abduction in kidnapping. The victim's movements are restricted without his consent (by force or deception) and this is done intentionally and unlawfully (as opposed to a "citizen's arrest"). In the first degree it is felonious (Class E) and it is committed when the victim is consequently exposed to the risk of serious physical injury.

Example:

Smith locks Jones in a large meat refrigerator for several hours. Unlawful Imprisonment, First Degree.

6. Custodial Interference at the second degree level is a Class A misdemeanor, occurring if a friend or relative takes a child from its lawful custodian simply to assume custody or control; or it occurs when the perpetrator takes or entices away, without any legal right, someone entrusted to the care of another.

   This conduct becomes, in the First Degree, a Class E felony when it is done under circumstances that entail the risk that the victim's safety or health will be materially impaired.

7. Coercion in the Second Degree is a Class A misdemeanor, involving various methods of compelling a person to do or not to do something. Blackmail is one of these methods. These methods constitute felonious conduct (Coercion First Degree, a Class D felony) when the victim becomes afraid that his non-compliance with the perpetrators' demands will cause physical injury to a person or damage to property, or when the victim is forced into felonious behavior himself.

G. Can felonies involve records and documents?

There are several felonies which involve falsifying records or documents:

forgery

criminal possession of forged instruments

falsifying business records

tampering with public records

offering a false instrument for filing

issuing a false certificate

H. What offenses involve acts against governmental administration?

At the misdemeanor level these occur when a person intentionally obstructs the administration of a governmental function such as firefighting. Conviction of such activity can be punishable by imprisonment for up to one year.

At the felony level are bribery, bribe receiving, and criminal anarchy. The last offense is confined to advocacy of violent overthrow (through various means) of the New York State government.

I. What offenses involve health, morals, and public order?

1. These offenses, usually treated as misdemeanors, include:

riot (without serious harm resulting)

incitement to riot

unlawful assembly

aggravated harrassment
(use of phone, telegraph, or mail to annoy or harm someone)

criminal nuisance

public lewdness

endangering the welfare of a child

adultry

2. Other offenses are treated as felonies.

Riot, First Degree (Class E felony) occurs when one engages in violent conduct along with 10 or more other persons, creating a risk of public alarm either recklessly or by intent. Because of this conduct some innocent person is physically injured or there is substantial damage to property.

Example:

10 students from the same high school behave wildly in a crowded subway, pulling alarms and causing a passenger to have a heart attack. Riot, First Degree.

Bigamy is a Class E felony. Bigamy occurs when one enters into marriage, or acts as if he is entering into marriage with one person while knowing that he is married to another. An honest belief that one had obtained a valid divorce before entering into marriage with a second person is a good defense.

Abandonment of a Child (Class E felony) is desertion of a minor under 14 with the intent completely to abandom him, on the part of a parent, guardian or legal custodian.

J. What offenses are violations of the right to private conversation?

1. Eavesdropping is a Class E felony involving unlawful wiretapping or bugging.

   Wiretapping occurs when someone other than the sender or receiver of a telephone or telegraphic communication intentionally overhears or records what is being communicated. This third person has the consent of neither sender nor receiver (he legally needs only the consent of one of them). The nature of the device he uses is irrelevant.

   "Bugging" follows the same definition as (a) above, but extends to any conversation which is being mechanically overheard and/or recorded.

2. Possession of eavesdropping devices with intent to use them for eavesdropping is a Class A misdemeanor.

   Note: Eavesdropping is allowed under special circumstances by Article 700 of the Criminal Procedure Law and by Title 18, U.S. Code, 2510 et seq. of the U.S. Code.

K. What offenses involve possession and handling of weapons?

1. The mere possession of certain weapons, if proven, constitutes commission of a Class D felony: explosives or incendiary bombs, a machine gun, (P.L. 265.05) a firearm and accompanying ammunition, etc.

2. Mere possession in your home or place of business of certain other weapons constitutes a Class A misdemeanor, but the charge is raised to a Class D felony if the possessor was previously convicted of any misdemeanor or felony:

   gravity knife, switchblade knife, cane sword,
   blackjack, metal knuckles, chupah stick,
   firearm without ammunition, etc.

3. Anyone under 16 who has any of the weapons mentioned above, or

   any air or spring firing gun, or
   any weapon which uses blanks, or
   any dangerous knife

   shall be adjudged a juvenile delinquent.

4. Possession of explosives with intent to use them unlawfully is a Class B felony.

5. The manufacture, transport, and defacement (to make identifying marks obscure) of weapons such as machine guns and firearm silencers by private individuals are felonious acts (Class D).

L. What are some basic features in drug law?

The range and scope of the New York Penal Law provisions against the unlawful possession or sale of certain drugs ("controlled substances") is too extensive to put into this outline. Certain salient features can be mentioned:

1. Sale is more severely punished than is possession. Sale is always a felony, with the class of felony depending upon the controlled substance and its amount. But to "sell" means "to sell, exchange, give or dispose of to another, or to offer or agree to do the same." (P.L. Sec. 220.00 (1)). For example, strictly speaking, giving your friend a marijuana cigarette may be a sale and therefore a Class C felony, for which the maximum term or imprisonment is 15 years.

2. The sale of any amount of heroin is a Class A felony with a maximum penalty of life imprisonment.

3. Marijuana possession is accorded the following treatment:

   less than 1/4 of an ounce (less than 25 cigarettes): Class A misdemeanor

   25-100 ciagrettes (1/4 to 1 ounce): Class D felony

   1 ounce or more: Class C felony

M. What are anticipatory offenses?

1. Criminal Solicitation. A person is accused of this if he solicits, implores, commands or otherwise tries to get another person to commit some crime. If the crime being solicited is a Class A felony, the criminal solicitation itself becomes felonious (Class D).

   Examples:

   Smith "puts out a contract" on Jones (solicits the murder of Jones by a hired, professional killer). Smith is chargeable with Criminal Solicitation, First Degree (punishable by up to seven years in prison).

   Smith solicits someone to commit arson, knowing that the person is a "firebug" and may be insane. The "firebug" is caught but is found mentally incompetent to stand trial. Smith is nevertheless chargeable with criminal solicitation.

Smith, who is merely "kidding around," tells Jones that he, Smith, has been tempted to rob a certain candy store. Jones takes him seriously, robs the store and kills the proprietor. Smith is not guilty of criminal solicitation, because his conduct was merely incidental to the robbery and felony murder.

2. Conspiracy. There can be no conviction on this ground unless an overt act in furtherance of the agreement to commit a crime is alleged and proved to have been committed by one of the conspirators.

Conspiracy becomes felonious when the conduct agreed upon is a Class C felony or worse.

Examples:

X, Y, and Z agree to rob a certain bank in a week. The next day the bank closes for good. Nothing more is ever done about it. There was an agreement to commit a crime, but X, Y and Z cannot be charged with conspiracy.

X, Y, and Z agree to rob another bank instead. X spends some time in the bank, observing the employees' habits. Conspiracy has been committed because of X's action in furtherance of the agreement.

3. Attempt is intent to commit a crime and conduct which helps to bring about the commission of that crime. An attempt to commit a crime is treated as being one degree less serious than the completed crime. The one exception is at the bottom rung of the criminal ladder, where an attempt to commit a Class B misdemeanor (maximum punishment of 3 months in jail) is also punishable as a Class B misdemeanor.

Note: Whenever someone is charged with a felony, e.g., arson, he must be charged only with a particular degree of it. He cannot be simultaneously charged, for example, with Arson, First Degree and Arson, Second Degree. If he is charged with Arson, First Degree, then the lower degrees of arson are "lesser included offenses" like lower rungs on a ladder. In "plea bargainning" (Unit IV F.) the accused, arrested on a charge of Arson, First Degree might agree to plead guilty to a charge of Arson, Second Degree. The punishment meted out would then befit Arson, Second Degree.

Similarly, one cannot be charged with both a felony and the attempt to commit a felony. The prosecution must pick one or the other for its charge. Here, too, plea bargaining can result in an agreement by the accused to plead guilty to the less severe crime of, e.g., attempted robbery rather than actual robbery.

N. What are some common defenses?

1. Infancy. In New York a person less than 16 years of age is not "criminally responsible" for conduct. This means that such a person will be subject to special juvenile treatment. But watch for changes in this area of the law.

   Note: Someone over 16 persuades someone under 16 to commit a crime; the former will not be able to take advantage of this defense, but will instead be prosecuted as an accomplice. One is liable for the conduct of another (if one is not himself an infant or suffering from mental disease or defect) when one "solicits, requests, importunes, commences, or intentionally aids" that other person in the commission of the criminal act.

   But also note that the testimony of one accomplice against the other is considered tainted. Therefore a person accused of any offense cannot be convicted unless there is corroborating evidence in addition to the testimony of the accomplice who wants to "turn state's evidence."

2. Mental disease or defect. This defense requires a showing that the accused lacked substantial capacity to know or appreciate the nature and consequence of the criminal conduct with which he is charged or that this conduct was wrong.

3. Justification. This defense is complex because of the great range of different situations to which it can be applied.

   Physical force can be used in an emergency to avert a greater harm.

   Examples:

   To stop a fire with another fire, authorities or even private individuals can set buildings on fire, after making sure that all persons have left the buildings.

   A family is stranded in a storm and they struggle to an unoccupied cottage. They can force their way in if this is necessary to save themselves from serious harm.

   Smith uses force to prevent Jones from committing suicide. This is justifiable.

   Physical force can be used under certain circumstances by legally authorized persons (parents, teachers, bus drivers, policemen, etc.). The rules are complex, but the point is that there is a legally conferred status which, under the proper circumstances, justifies the use of force.

Physical force can be used to defend oneself or another from what is reasonably believed to be the imminent or actually occuring use of unlawful force. The amount of force one can use must be reasonably appropriate, i.e., sufficient to stop the assault.

The justifiable use of deadly physical force (that which can cause death or serious physical injury) is carefully restricted. If you can safely retreat and avoid deadly force you must do so. But if you are in your own home you do not have to retreat, and you can use deadly force if a burglar does not himself retreat and is about to resist you.

Deadly force can be used if it is reasonably believed to be necessary under urgent circumstances to prevent the commission of arson, forcible rape, kidnapping or robbery.

Deadly force cannot be used to prevent larceny, vandalism, or trespass.

4. Duress. This defense is good in any prosecution for an offense. The force used or threatened to be used must be such that "a person of reasonable firmness in his situation would have been unable to resist."

   The accused must not have intentionally or recklessly placed himself in a situation where it was possible that he would be subject to duress.

5. Entrapment. This defense is good if the accused was not disposed to commit the crime but was induced or encouraged to commit it by law-enforcement people or by persons acting in such a manner at the behest of law-enforcement people. But the U.S. Supreme Court recently held that entrapment will not be good as a defense in a situation where the accused has been "set up" by two government agents, one of whom sells him drugs and one of whom later buys the drugs from him: a drug "retailer" is not being entrapped.

6. Renunciation. The accused must show a voluntary and complete abandonment of intent to commit the crime, and also that he made a substantial effort to prevent the commission of it.

Note: Important aspects of criminal procedure under the federal law and New York Criminal Procedure Law are considered in the units on the police, the courts, and corrections.

Unit II - Some Basic Features of Criminal Law

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UNIT III - THE POLICE

A. How do the students view the police?

A survey of student attitudes could include the following questions:

Should the police let vigilantes like the hero of *Death Wish* alone?

Should there be any limits on the methods the police use to catch criminals?

Would you report the existence of a secret "death squad" in the police force (formed to "eliminate" notorious criminals) to a trustworthy official?

Are the police criticized too often?

What do you think of someone who says he or she wants to become a policeman?

Do you think the police push people around too much?

Do you think the police are too lax about enforcing the laws?

Should people help the police by providing information, rescuing victims, testifying in court, etc.? Why or why not?

Reasons for different attitudes might be related to age, ethnic group, economic status of students' families, experiences with police, etc.

Exposure of students to classroom speakers from the police and from defense organizations such as the Legal Aid Society might help to modify stereotypes. The desirable outcome is that students develop a habit of balancing the interests of society along with the rights of the individual as situations arise.

B. How does the public view the police?

Attitudes may vary from one ethnic group to another, or from one socio-economic group to another.

Ambivalence of attitudes is probably inevitable. There are some laws that the majority of the people may not want to see enforced. There are some policemen who are sometimes corrupt and abusive.

C. How do the police perceive the public attitude toward them?

1. For a variety of reasons a siege mentality can develop among the police, especially when crime rates are rising:

They are blamed for not controlling crime, but actually a majority of reported crimes have never ever been solved.

They see the wretched poverty that breeds violent crime and yet they feel the police are being blamed for what is beyond their control.

They must operate with caution because at any moment their lives may be in danger. Police officers learn to keep a cautious emotional distance between themselves and the public.

They see many criminals being released because of technicalities in the law of search and seizure about which legal experts often disagree. Or they see criminals soon back on the streets because of plea bargaining or leniency on the part of judges.

2. The police may tend to divide the public into those who are "for" them and those who are "against" them. This can lead to strained feelings between the police and the critics of particular police practices, or between the police and attorneys who are seeking to give their clients their right to the best defense possible.

D. What are some daily, routine procedures of the police?

1. Police spend much of their time in "order maintenance" activities:

responding to complaints about domestic quarrels — these may be resolved peacefully, or arrests may have to be made;

noisy parties—usually there is a warning given on the first visit;

minor public disturbances— dispersal of crowds may be necessary;

traffic violations, issuing citations or letting offenders go with a warning;

picking up drunks, calling patrol wagon - taking them to jail.

2. "Community service" activities are part of police routine. The most dramatic of these are:

   rescuing persons who are in precarious situations or who are contemplating suicide;

   emergency delivery of babies.

E. Do the police have discretionary power?

1. Laws are often not precise and thus there is latitude for discretion in enforcement.

   Example: "Sale" of drugs in the New York Penal Law might or might not be applied to a situation where a friend at a party passes a marijuana cigarette to a friend.

2. Because a wide variety of behavior that is regarded as "victimless" is still criminalized, law enforcement agencies such as the D.A.'s office have to set priorities. Limited resources mean that there is less stringent enforcement of some of these laws.

   Overlooking some offenses may even be beneficial for tactical reasons.

   Example: In order to deter narcotics dealers the police might rely upon informants who are prostitutes and numbers runners.

3. Public opinion and political pressure may serve to discourage enforcement of certain laws in certain areas.

4. Discretionary enforcement power is arguably beneficial in that vague or widely unpopular laws can be rendered less oppressive. But this power can also create opportunities for corruption if there is selective enforcement.

   An example of the controversies that can arise over discretionary power to enforce the laws is the "Combat Zone" in Boston. Prostitution and other activities, though unlawful everywhere in Massachusetts, are by an "understanding" allowed to flourish in a small area of Boston. This same area has seen a phenomenal increase in assaults and muggings. Cities everywhere are thinking about Boston's "Combat Zone" as they try to decide on whether to copy it, or to push for legalization of prostitution in certain zoned areas.

F. What do the police do in routine street arrests? (In such arrests the suspect offers no physical resistance, carries no deadly weapons, and there are no search and seizure issues to consider.)

1. The arrested person must be made aware that he is indeed being arrested.

   The person making the arrest must have the authority to make an arrest. An ordinary citizen or a private security guard can detain, but often not arrest, someone who has committed a crime.

   The arrested person must be restrained or must know that he cannot freely leave the scene.

   The arrested person must be told that an arrest is being made intentionally, and be told the criminal offense for which he is under arrest.

2. The arrested person must be given his "Miranda" rights, even if the arrestor does not say he is arresting or intends to arrest him. In effect, "reading" someone his "Miranda" rights is equivalent to telling him that he is under arrest. The "Miranda" rights, based on the case of Miranda v. Arizona, 84 U.S. 436 (1966), require that a person under custodial interrogation be told the following:

   He has the right to remain silent.

   If he says anything it may be used against him.

   He has a right to see a lawyer, and if he cannot afford one, the state will provide one.

   In addition, the police must stop questioning a suspect whenever the latter requests a lawyer. A person can waive his "Miranda" rights. But if he later denies this waiver, the state must prove that there was a waiver.

G. What happens to an arrested suspect in the station house?

1. The Desk Officer questions the arresting officer and determines the correct charges.

2. The suspect's pockets are emptied and all items are inventoried. Some items might be used later as physical evidence, e.g., a screwdriver in the possession of a burglary suspect.

3. A variety of forms must be filled out. Each form contains the "Miranda" warnings. Most important is the Desk Appearance or D.A.T., as it is called in New York. Based on the responses which the accused gives to the arresting officer as to employment, domicile, roots in the community, etc., and a corresponding point system, the stationhouse officer has the discretionary power to release the accused, based on the assumption that the accused will return to court for arraignment.

   If he is released, the accused will be notified by mail of when he is to return to court for arraignment.

4. If he is not released, the suspect is taken to the holding pen and given a strip search for weapons which might be hidden on his body, and for signs of narcotics use. If weapons or narcotics are found, additional charges are made. Evidence of this kind will necessitate additional forms and reports to various police department laboratories.

5. The suspect is fingerprinted. Copies are sent to federal, state and city agencies.

6. The suspect is put back into the holding pen while forms are being completed. He then signs the forms.

7. If the suspect has been arrested on a charge of murder, rape, burglary, or arson, he may be given an additional in-depth interview by detectives from Police Headquarters. The suspect's awareness of his "Miranda" rights can keep him from making incriminating admissions.

8. All relevant forms are taken back to the desk. After the Desk Officer has checked and signed the forms the suspect is considered officially "booked."

9. In misdemeanor cases the suspects are taken to the appropriate Criminal Court building. Felony suspects are taken there only if they were booked between 9:00 A.M. and 6:00 P.M.

10. If a felony suspect is booked after 6:00 P.M. he is lodged at the same station house or at another if there is a shortage of rooms. On the following morning he is taken to the Criminal Court and put in the custody of the Department of Corrections.

H. What happens to an arrested suspect in the Criminal Court building?

1. The suspect is searched and processed, and his name is recorded.

2. The suspect receives all property that was taken from him except items that are deemed harmful to him or to others.

3. The suspect is taken to the holding pen.

4. The arresting officer goes to the Complaint Room and is interviewed by an Assistant District Attorney (A.D.A.) to determine if there are sufficient grounds to take the case to trial.

5. If the arrest was made at the request of a private person (civilian-initiated complaint), e.g., a spouse in a domestic dispute, the civilian is interviewed by the A.D.A.

6. All papers are sorted and checked, assigned a Docket Number (a number given to the case for court scheduling purposes), and sent back to the clerk of the court.

7. Physical evidence such as a gun or burglary tools, and laboratory reports are turned over to the A.D.A.

8. The A.D.A. and the Early Case Assessment Bureau jointly determine if the offense merits consideration by the Grand Jury for a possible felony indictment.

9. Final charges are drawn up.

10. Recommendations are made with regard to acceptable pleas.

11. The arresting officer waits for the "Tap Sheet," which is a record of prior arrests and of known aliases of the suspect. Fingerprints have probably arrived by this time.

12. The suspect is interviewed for possible "release upon his own recognizance" (R.O.R.). A recommendation may or may not be made to the judge that the suspect should be released after arraignment until the time of trial, without bail. The suspect might be released on his word that he will return to court for trial on the appointed date.

    An R.O.R. recommendation is based on a background profile of the suspect and takes into account family ties, employment record, prior arrests, and recommendations by agencies such as the Police Department.

13. The suspect can be interviewed by Legal Aid.

14. The suspect is now ready to be taken to court for the initial appearance before a judge.

I. <u>What is the basic purpose of the laws on arrest, search and seizures?</u>

1. The laws try to insure that the defendant's constitutional rights are not violated. The purpose of a trial is to find the truth to the best extent humanly possible. But relevant evidence will be excluded from the trial if it is found that such evidence was obtained by methods which violate the guarantees of the U.S. Constitution. For example, in a federal trial evidence obtained unjustifiably without a proper search warrant must be excluded because of a violation of the Fourth Amendment. If a confession was taken from the defendant after he was arrested and he was not given his "Miranda" warnings, that confession cannot be introduced in court because there was a violation of Fifth Amendment rights. If the defendant was identified in a lineup by a robbery victim,but he did not have counsel present to insure fairness, the lineup identification is excluded because the Sixth Amendment was violated.

2. In state trials exclusion of "tainted" evidence is based upon violations of the Fourteenth Amendment. This amendment applies the fundamental features of the Bill of Rights, particularly those in the Fourth, Fifth, and Sixth Amendments, as limits against

the states and their political subdivisions in criminal proceedings. The Supreme Court is the final source of interpretation as to how the Fourteenth Amendment applies in state trials.

J. What are the guidelines for applying the Fourth Amendment?

1. The most difficult area of criminal procedure law has to do with Fourth Amendment rights, as channeled through the Fourteenth Amendment to limit the states. It provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

2. The Fourth Amendment was established by people who never wanted a repetition of what the British did in colonial America by way of wholesale violations of privacy. A principal cause of the Revolution was the outrage felt by the colonists to the unlimited intrusions made possible by the Writs of Assistance, designed to check smuggling and possession of goods without payment of the mercantilistic taxes.

3. The exclusionary rule was developed by the Supreme Court as a method of deterring illegal police intrusions. The "fruit of the poisoned tree" doctrine gave it extra force: e.g.; an illegal search for a suspected cache of marijuana yields marijuana, heroin, machine guns and counterfeit money; none of these items can be admitted into the trial as evidence because they were obtained, by illegal means, albeit unexpectedly.

4. But in the immense variety of law enforcement situations that arise it is impossible to be always confident of how the Amendment guarantees should apply. Legal experts are often in deep disagreement. The police feel baffled and understandably unsure of whether they are avoiding mistakes which can cause dismissal of a case. Sometimes, police perjury may occur, as in the "dropsy" cases where an arresting officer testifies that the defendant reached into his pocket and clumsily dropped a packet of heroin or a syringe on the floor "in plain view." However, no alternative has, so far, been found which would safeguard Fourth Amendment rights as effectively as does the exclusionary rule.

K. Confrontation between Police and Individuals:

1. A police officer has the right to make an arrest without a warrant (seizure of persons) if he has reasonable grounds to believe that the person he is arresting has committed, or is committing, an offense. Factors in determining whether reasonable grounds exist are:

evasive answers to proper questions;
resistance to police;
destruction of possible evidence;
unreasonable explanations;
flight, suggesting consciousness of guilt.

2. Stop and Frisk (CPL - Sec. 140.50): A police officer may stop and question a person in a public place if he believes that that person has committed, is committing, or is about to commit a crime. If he has a reasonable suspicion that the suspect has a dangerous weapon or implement, he may "pat the suspect down" on the outside of his clothing. If he feels what he could reasonably suspect might be such a weapon or implement he can reach into the clothing and remove it in order to protect himself.

   If he finds instead some other item that it is illegal to possess, such as heroin in a hard metal container, the reverse of the "poisoned tree" doctrine occurs. This unexpected evidence can be used against the suspect because the intrusion was justified from its inception.

3. The right of police to stop, i.e., "seize" citizens short of actually arresting them, was established clearly by the Supreme Court in the case of Terry v. Ohio 392 U.S. 1(1968), and provides the basis for New York's "stop and frisk law" described above.

   In that case an experienced plainclothes police officer noticed three men "casing" a department store. He finally approached them, identifying himself as a policeman. He seized one of them (Mr. Terry), spun him around, and patted him down. He felt the presence of a hard metallic object in Terry's overcoat pocket, reached into it and removed a pistol. He placed the three men under arrest. Subsequently, Terry was convicted of illegal possession of a pistol. Terry appealed, claiming that there was an illegal search and seizure. Chief Justice Earl Warren wrote the majority opinion upholding the right of a police officer to stop and frisk on the basis of a reasonable "articulable" suspicion that his own life or safety might be in peril.

4. The extent of the detention (stopping) of an individual is limited to the purpose for which it was made, unless further suspicious actions or circumstances give rise to "probable cause" to believe an arrest is justified.

   Example: Smith is stopped by a police officer who notices that the tail light of the car Smith is driving is defective. The police officer asks for Smith's license and registration, which Smith is able to supply. With nothing more to go on, the policeman suddenly tells Smith to get out of the car and to hand over his keys. The policeman opens the trunk and finds heroin. This is an illegal search and seizure because there was no probable cause to justify the intrusion.

L. What other points determine search and seizure rulings?

1. The case by case resolution of search and seizure problems in a multitude of situations occurs with such frequency that one can stay up to date on developments only by following the news. The "New York Times", for example, provides excellent coverage of Supreme Court and New York Court of Appeals decisions in this ever-changing area.

2. Overall, there are only three occasions when the police can make a search:

   When it is incident to a legal arrest based on probable cause (as distinguished from the "patting down" on the outside in a stop-and-frisk situation);

   When it is pursuant to a valid search warrant;

   When it is based on a knowing, voluntary consent made by the potential defendant. (But the burden of proof of this consent is on the prosecution.)

3. "Probable cause" consists of facts or apparent facts as seen by an experienced police officer that give rise to a reasonable belief that a crime has been committed or that particular property sought to be seized is located in a certain place. (Brinegar v. U.S., 338 U.S. 160-1919).

4. If a private party illegally seizes evidence it is admissible in court. Burdeau v. McDowell, 256 U.S. 465(1921).

5. A search incident to a valid arrest includes anything that is conceivably within "grabbing distance."

6. Hearsay evidence (statements made by someone who is not called to testify and be cross-examined as to such statements in court) can be admitted in a pre-trial hearing to establish the existence of probable cause. Such evidence is likely to have been given by "reliable informers." U.S. v. Harris, 403 U.S. 573(1971).

7. In the great majority of cases the police cannot be expected to get a search warrant in time to prevent the disappearance of incriminating evidence. This is especially true in automobile cases. The lack of a warrant under those circumstances will not result in the exclusion of evidence obtained incidental to a legal arrest based on probable cause.

An example of a negative application of this rule is Preston v. U.S. A man was arrested for vagrancy. Long after the arrest the police searched his car, which was parked at the police station.

The incriminating evidence found in the car was excluded by the Supreme Court because the car had nothing to do with the arrest. The search was held to be unreasonable because it was too remote in time and place from the original arrest.

M. What constitutes legal arrests (as found in New York CPL, Article 120)?

1. An arrest warrant can be executed at any time. It is issued by a judge upon sworn information about the commission of a crime.

2. A person who is about to be arrested and who is at home must be notified that the police officer intends to arrest him and has authority to enter. There are some "no-knock" exceptions:

   when there is a risk that the suspect will escape or attempt to escape;

   when notification would endanger the life or safety of the officer or another person;

   when material evidence might be destroyed or hidden.

3. No arrest warrant is needed if the police officer has reasonable cause to believe that an offense (violation, misdemeanor or felony) was committed whether or not in his presence.

4. A police officer can make an arrest at any time, using justifiable force if necessary. He must have reasonable cause, which has been held to mean a good faith belief that the person arrested was guilty of the offense. The good faith belief must be based on grounds that would induce any ordinarily prudent, cautious police officer to make the arrest. People v. Santiago, 13 NY 2d 326 (1963).

5. The suspect must be informed of the police officer's authority to make the arrest and the reason for it. But if the suspect flees or resists then the requirement is dispensed with.

6. The arrestee must be taken immediately to a police station in the area.

7. A private citizen may arrest someone for any offense committed in his presence, or for a felony actually committed by the arrestee outside his presence.

Unit III - The Police

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   Explain what happens after arrest, with specific suggestions as to the rights of arrestees. Describes the steps in procedure prior to trial.

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5. Law in a Democracy: Enforcing the Law. Guidance Associates (1974). 2 sound filmstrips, guide, 26 min.; grades 9-12. Sale: $41.50 (with records); $46.50 (with cassettes).

   Reenacts an armed robbery, police investigation, and booking. An extensive inquiry into the police function.

UNIT IV - THE COURTS

A. What are the different court systems under which we operate?

Note: All references to the state court system and its rules of procedure, unless otherwise noted, are to what occurs in New York.

1. The U.S. Constitution provides for a division of powers between the Federal Government (central government) and the States. This system of division of powers is called federalism.

2. Each State has its own powers which cannot be invaded by the Federal Government. Examples include laws regulating marriage and divorce, and the great bulk of criminal law. A system of courts exists in each State to try cases involving these laws, and to hear appeals which sometimes arise from the cases.

3. The Federal Government in turn has its own autonomous sphere of powers. Wherever there is an overlapping of the State and Federal power spheres, conflict between the two is resolved in favor of the latter. At the apex of the Federal court system is the Supreme Court, which provides the final authoritative interpretations of the law of the Constitution.

4. We are citizens of the State of our domicile as well as citizens of the United States. We are subject to the jurisdiction of our State's courts with regard to matters arising under our State's laws; and we are subject to the jurisdiction of the Federal courts with regard to matters arising under Federal laws. (We can also be made subject to the laws and procedures of another, non-domiciliary State under certain circumstances, e.g., if we commit a crime while in that State.)

B. What is included in the Federal Court System?

1. The arrangement of federal courts is shown on the chart below.

Supreme Court of the United States

United States Courts of Appeals
11 circuits

Court of Customs
and Patent Appeals

Customs
Court

	U.S. District Courts with Federal and Local Jurisdiction	U.S. District Courts with Federal Jurisdiction only
Administrative Agencies Tax Court Federal Trade Commission NLRB FCC Etc.	District of Columbia Canal Zone Guam Virgin Islands	88 Districts in 50 States 1 in Puerto Rico

U.S. Supreme Court hears from State Courts and from the Supreme Court of Puerto Rico

2. Federal criminal cases involving such matters as counterfeiting, misuse of the mails, theft of Federal property, flight across State lines to avoid prosecution, transporting a kidnapping victim across state lines, etc. are tried in the Federal District Courts. These are the only Federal courts in which there is trial by jury (12 members sit on each Federal jury and a unanimous vote is required for conviction).

3. Appeals are taken to the appropriate Courts of Appeals. Appellate review in both Federal and State courts never involves retrying a case. It is limited to consideration of contentions that there were significant errors made in the trial court below, either as to interpretation of law or as to procedure. Transcripts of the proceedings below, as well as oral and written arguments of the attorneys for both parties, are submitted for the appellate review.

4. The Supreme Court hears some, not all, appeals from the Federal Courts of Appeals. It also hears appeals from the highest State appellate courts. There are two methods by which the Supreme Court may consent to review a case:

   It may grant an application for a writ of certiorari ("We wish to be certified for review.")

   It may grant an application claiming a right of appeal, when the losing party seeks to review the consitutionality of a State or Federal law.

C. What is included in New York State's court system?

Court of Appeals

Appellate Divisions of the Supreme Court

Supreme Court

Counties and Cities Outside New York City

Surrogate's Court | County Court | Family Court

City Court | District Court

New York City Courts

N.Y.C. Civil Court | Surrogate's Court | N.Y.C. Criminal Court | Family Court

Localities

Justices of the Peace | Village Magistrates | Police Jusitices | Magistrates Courts

Note: There can be confusion in New York State about the meaning of "Supreme Court." The highest court is called the Court of Appeals.

1. The criminal courts of New York State are comprised of "superior" courts and "local" criminal courts. A "superior court" means a supreme court or a county court. In New York City a "local criminal court" means the New York City Criminal Court. N.Y.C.P.L. Section 10.10 .

2. In New York City all felonies are tried exclusively in Supreme Court. The Criminal Court has trial jurisdiction of all offenses other than felonies. Note that a felony is any crime for which the maximum term of imprisonment exceeds one year. C.P.L. Sections 10.20; 10.30 .

3. Family Court has jurisdiction over the cases of those accused of offenses who are under 16 years old, and over most complaints arising out of disputes between spouses.

D. Who are the main actors in the Courts? What roles do they play?

1. The prosecuting attorney is one of the principal actors.

In New York City each borough has (as does each county throughout the State) a District Attorney (D.A.). Each D.A. has a staff of assistant district attorneys (A.D.A.'s). The D.A. is elected to a four-year term and represents the county or borough in initiating and maintaining criminal proceedings.

Since an offense under the Penal Law is by definition an offense against society, the case title reads as "The People of the State of New York v. Name of the Defendant." The prosecuting attorney, normally an A.D.A., represents the people.

The American system of jurisprudence, like that of England, operates under the assumption that a person is innocent until proven guilty. In New York, as elsewhere, the prosecution has the burden of proof and must persuade the trier of fact (judge or jury as the case may be) of the guilt of the defendant as to every element of the offense "beyond a reasonable doubt." (C.P.L. Section 70.20)

Note that in civil cases a less demanding standard of proof is required. The plaintiff must show by a "preponderance of the evidence" that his claim has merit. If a civil court jury (6 members with a 5/6 vote required to uphold the plaintiff) finds for the plaintiff on a particular claim on the basis of evidence too paltry to meet this standard, the judge can reverse the verdict. (Judgment for defendant N.O.V.: "nihil obstante veredicto").

Similarly, a criminal court judge can reverse a jury's finding of guilt if he finds that the evidence, viewed as a whole, failed to meet the "beyond a reasonable doubt" standard. See, Scottsboro Brothers case: Norris v. Alabama, 294 US 598 (1935.).

The prosecuting attorney must make an opening statement as to what he intends to prove. He must offer evidence to prove the charge. He therefore begins the questioning of witnesses.

2. The defense attorney plays the other principal role.

The defense attorney has an obligation to represent the accused to the best of his ability. In doing so he needs complete candor from his client. Whatever the defendant says to his attorney in private consultation as to what has occurred is "privileged." That is, the attorney is not allowed to disclose it and cannot be compelled to do so in court.

The defense attorney must advise his client of the options that are available (such as "plea bargaining" for conviction on a reduced charge versus going to trial). He must be active in making motions that might help his client e.g., a motion to suppress evidence obtained by dubious means.

3. The Legal Aid Society of New York City helps defendants.

All States are required to furnish attorneys for indigent defendants in criminal cases. Argersinger v. Hamlin, 407 US 25 (1972). In some places this is done by government-employed "public defenders," or by "assigned counsel" (private lawyers who are paid by the State). In New York City a private organization performs this function.

The Legal Aid Society was founded in 1876 to help those who could not speak English or who were too poor to be able to hire a lawyer.

The Society has a staff of more than 600 full-time attorneys who aid more than 200,000 people annually in New York City. Most of those who are represented are indigents in criminal cases.

The Legal Aid Society has several divisions: Civil, Criminal Defense, and Juvenile Rights. It still preserves its status as an independent, private, nonprofit organization.

The Society is active in many other areas: representing indigent defendants in New York City's Federal District courts, promoting prisoners' rights and defense against parole revocation, seeking jobs for clients as an alternative to imprisonment, and more.

4. The judge controls the proceedings and passes sentence.

The judge is the authority on the application of rules of law in the courtroom. He must be impartial. He must rule on whether or not certain evidence is admissible.

He can use court officers to enforce decorum, and can hold persons in contempt of court for improper conduct. If a defendant becomes abusive so as to impede the proceedings, the judge can order that he be bound and gagged. Illinois v. Allen, 379 US 337 (1970).

He instructs ("charges") the jury on the principles of law that are involved in the case after both sides have presented arguments.

If he is satisified that the burden of proof for a conviction has been met, he must decide on the sentence to be given.

5. The grand jury decides whether an offense should go to trial.

This is a duly selected body of people ranging in number (in New York from 16 to 23. Historically it was established to prevent unfounded prosecutions. This function still exists, for it must decide if there is enough evidence of commission of a felony to warrant prosecution of the accused.

If at least 12 members decide that there is sufficient evidence for a trial, a "true bill" of indictment is returned. Otherwise a "no bill" is returned.

If the grand jury feels that the evidence is inadequate for a felony trial but sufficient for a misdemeanor trial, the charge can be reduced and sent back to Criminal Court as a misdemeanor. (When this happens it is called an "information" as opposed to an "indictment" for a felony.)

The grand jury has broad power to make an investigation of a case or of a situation in which crimes may have been committed. The prosecuting attorney can present evidence from any source deemed reliable (e.g., hearsay not allowed). Illegally obtained tangible evidence can be presented: Civil Practice Law and Rules (CPLR) 4506. But illegally obtained wiretap evidence cannot be received: CPL 90.30.

The defendant is not entitled to have a lawyer present in the grand jury proceedings. He can be compelled to testify, or else face charges of criminal or civil contempt. But if he or a witness is so compelled, "transactional immunity" is given in New York State. This means that he cannot be prosecuted for anything that he admits or that is linked in an evidentiary way to his testimony.

Secrecy of grand jury proceedings is required so as to encourage witnesses to come forth and disclose what they know about possible criminal activities.

A grand jury's indictment must not be confused with a conviction. An indictment is merely a written accusation charging a specific person with having committed a felony.

6. The petit jury is an actual trial jury.

This is the ordinary criminal trial jury, traditionally consisting of 12 members, whose verdict was required to be unanimous. (This still holds true for New York.)

The Supreme Court has held that States can provide, at least in trials of non-capital offenses, that a jury consist of only 6 members. Williams v. Florida, 399 U.S. 78 (1970). In non-capital cases, at least, the Supreme Court has also held that a unanimous verdict need not be required as Johnson v. Louisiana, 406 U.S. 402 (1972); 9 out of 12 jurors required by Louisiana.

The jury system goes back to the English Common Law. The Declaration of Independence lists as one of its grievances the denial of trial by jury to the colonists. The English writer, G.K. Chesterton, said: "I can trust twelve ordinary men, but I cannot trust one ordinary man."

Jurors are selected from voter registration lists in New York.

The jury has an obligation to form a shield against bias and corruption. They must impartially weigh conflicting evidence and disregard what the judge tells them to disregard. They must follow the judge's instructions as to the principles of law applicable to the case.

7. Additional courtroom personnel help the trial procedure.

Court stenographer records every word that is spoken at the trial, usually on a "stenotype" machine that looks like a typewriter but prints in shorthand.

Court clerk handles various clerical duties, such as the recording and numbering of evidence, and the processing of bail monies, bail bonds and various court documents.

Court officer, often armed, is an agent of the court to enforce decorum and security in the court.

Law clerk assists the judge (usually in appellate courts, Federal courts and State trial courts of general jurisdiction) by researching points of law; helps to prepare the judge's instructions to the jury; normally the law clerk is a law school graduate with an outstanding scholastic record.

E. What happens to the accused during arraignment?

After the "booking" and other station house procedures described in Unit III are completed, the accused must be brought before a magistrate. He is formally charged with the commission of an offense. This is an arraignment.

1. The defendant has the right to counsel at the arraignment and at every subsequent stage of the criminal action which has been brought against him. If he has none he is entitled to an adjournment for a reasonable period, and to free communication to obtain counsel. If he is indigent the court must assign him counsel. (C.P.L. Section 170.10).

2. The accused is entitled to knowledge of the charges against him, thus the existence of the arraignment. He may decide to plead guilty, but felony pleas are heard only in Supreme Court. If he pleads guilty to a misdemeanor in Criminal Court he can be sentenced then and there by the judge.

3. The judge may put off the sentencing, in which case the accused may be sent to jail ("House of Detention"), released upon his own recognizance ("R.O.R."), or released on bail. These same alternatives apply, of course, to those who have pleaded "not guilty" at their arraignment, except that a date is set for trial.

4. If bail is set then the accused is purchasing his freedom until the trial. Setting bail is a way of trying to make sure that the accused will appear for trial without burdening overcrowded jail facilities. It enables the accused to be more active in the preparation of his defense.

5. The Constitution provides that "excessive" bail shall not be set, but what is "excessive" or not is not always easily ascertainable. Review of the bail amount can be had in an appellate court, but reversal seldom occurs.

6. A bail bondsman's help may be required. The accused pays the bondsman a legally specified rate of interest on the money he is borrowing to "post bail." The bondsman can require collateral in his discretion. The rates of interest are as follows:

   5% on the first $1000 of bail;
   4% on the second $1000;
   3% on the amount in excess of $2000

7. When the accused appears for trial the bondsman keeps the interest payment and returns any collateral he obtained. If the accused fails to appear ("jumps bail"), he forfeits both the interest and the collateral.

F. What is plea bargaining?

1. Plea bargaining occurs when the accused, with his defense attorney, and the prosecuting attorney, confer and then agree that the accused shall plead guilty to a lesser charge. The participation of the judge varies, but is formally confined to questioning the accused to make sure that he was not coerced into a guilty plea. It can occur at the arraignment or at any time during the trial prior to a verdict.

2. The plea bargaining process is considered to be an indispensable part of the criminal justice system. If it were not allowed, the number of trials that would have to be held, considering the current crime rate, would cause the court system to collapse. There would have to be a phenomenal increase in taxes to support new courts and prisons. It might be impossible to get enough jurors qualified to serve.

G. What happens in jury selection?

1. The jury is impanelled, i.e., selected and sworn in. The prosecuting and defense attorneys ask prospective jurors about their feelings on matters pertaining to the specific case and about previous jury duty. This questioning process, aimed at determining qualification for service on the jury, is called the voir dire (French: to speak the truth).

2. Each attorney can challenge the impanelling of a prospective juror:

   the challenge for cause means an attempt to reject someone for a specific, stated reason such as bias or inability to reach a fair verdict;

   the peremptory challenge requires no stated reason and each side can make up to 15 of these.

3. The judge can also reject a prospective juror for a specific reason. The judge swears in the accepted jurors, completing the impanelling.

4. Jury selection can be challenged in the State and Federal courts if a systematic pattern exists in which a racial group is regularly excluded. Hoyt v. Florida, 368 U.S. 57 (1961).

5. In any State, as well as in the Federal courts, if an accused has been charged with an offense which carries a maximum term of imprisonment of 6 months or more, he is entitled to trial by a jury. Duncan v. Louisiana, 391 U.S. 145 (1968).

H. How does the Adversary System work?

1. The attorney for each side can use every lawful means to convince a jury. The judge becomes a kind of referee.

2. If the attorneys are unevenly matched in skills and in experience the trial may become a game in which truth is the loser.

3. Middle class defendants who are not eligible for counsel from an organization such as the Legal Aid Society may have to pay great amounts of money for attorney's fees, investigators' expenses, the costs of filing appeals, etc.

4. Criminal law is an intrical field. Many lawyers are reluctant to specialize in it because of its complexity and also because of demoralizing courtoom conditions, difficulty in collecting fees, snobbery on the part of many other lawyers and public hostility toward those specializing in criminal law.

5. Prosecuting attorneys are identified with "law and order." They have the resources of government behind them in preparing their cases. They have a measure of financial security.

6. Only a small percentage of criminal cases ever go to trial. Middle class defendants with no record of prior convictions are more likely to go to trial than to enter into plea bargaining.

I. What happens during the trial?

1. The prosecuting attorney opens the case. He examines witnesses for his side. They are then subject to cross-examination by the defense attorney.

2. The defense attorney examines witnesses for his side, and they are subject to cross-examination by the prosecutor.

3. Each side makes a closing statement ("summary") to the jury.

4. During the course of the trial each side must be alert to infractions of rules of evidence and must object to them in timely fashion. If a judge sustains an objection to the introduction of certain evidence the jury must disregard whatever it might have seen or heard. If a judge overrules an objection, this might become the ground for an appeal to a higher court. If the appellate court finds that the trial judge made substantial errors, it will declare a mistrial. The defendant must be tried again with a new jury.

5. The law of evidence controls as to the testimony of witnesses, the documents that can be introduced, whether or not there are allowable exceptions to the rule against hearsay, the capacity of "expert witnesses" to testify, live demonstrations, etc.

   (Hearsay means any statement offered for the value of its content, and which was made before trial by someone not available for cross-examination in the trial. One example of an allowable exception, carefully delineated, is a "dying declaration" by someone to the effect that the defendant caused his imminent death.)

6. Examples of evidence that can be "suppressed," i.e., that the jury will not be allowed to consider are:

   physical evidence obtained in violation of the Fourth and Fourteenth Amendment rights (search and seizure);

   confessions obtained when the Miranda warnings were not given beforehand to the accused;

   lineup identification made in suggestive, unfair circumstances (e.g., all of the people on stage except defendant were of a different color).

J. What is the right to a speedy trial (as explained in CPL 30.30)?

1. This right is guaranteed under the Sixth Amendment and under New York's "ready rule."

2. The prosecution must be ready to go to trial within the following time periods:

   felony: within 6 months;

   misdemeanor: within 90 days;

   violation: within 30 days.

3. But if the defendant is in custody he must be released if the prosecutor is not ready to proceed within:

   90 days for a felony;

   30 days for a misdemeanor;

   15 days for a violation.

4. It can be seen that in the context of massive crime rates, overcrowded jails, plea bargaining and the constitutional right to a speedy trial, judges are under pressure to set low bail or to grant more R.O.R.'s (release upon one's own recognizance). Low bail or an R.O.R. is at least theoretically based on the defendant's having relatively stable roots in the community. But there often is "bail jumping", and many crimes are later committed by these persons.

K. What affects sentencing?

1. Some things which judges consider before passing sentence are:

   family background of the defendant;

   his employment;

   prior arrests and the record of their disposition;

   arguments by the defense and prosecution.

2. The defense attorney's pre-sentencing memorandum to the judge can be extensive, including, e.g., testimonials, affidavits, pictures, military decorations, high school athletic trophies, etc.

3. There are several different available dispositions of a case:

   Formal Probation with supervision by a probation officer

   Informal Probation; no supervision, but as with formal probation, if the convicted person violates any laws he can lose his probation status and be returned to court for sentencing.

   a fine

   Youth Training School for persons under 25, with actual time served to be set by the Youth Authority Parole Board;

   Commitment to a State mental institution, for insane persons and some sex offenders;

   County jail when the time to be served is less than one year;

   State Prison for those who are tried as adults (18 or over), with a minimum and maximum time fixed; (The actual time to be served will be decided by the Parole Board within the limits set. This is called indeterminate sentencing.)

   a combination of the above choices;

   the death penalty for murder in the first degree.

4. There are two kinds of sentencing: mandatory and indeterminate; each with ardent supporters and critics. Charges of judicial leniency, and that the offender is returned to the streets too quickly, have led proponents of heavier sentences to argue that state legislatures should set specific sentences, allowing judges little or no discretionary power (mandatory sentencing).

   Civil libertarians argue that indeterminate sentencing causes too much uncertainty: the offender should be able to know just how long he must stay in prison. This is especially relevant to offenders who are incarcerated in mental institutions, where the time to be served is decided by psychologists who evaluate the offender's progress.

5. Proponents of indeterminate sentencing argue that it is better because it provides flexibility for the judge, who is familiar with the case and with the offender's background, to render a more appropriate sentence. New York State has indeterminate sentencing for most felonies.

Unit IV - The Courts

Bibliography

1. American Bar Association. Law and the Courts. American Bar Association (1974), $.50. 35 pp.; paperback; grades 8-12.

   Guide to basic court procedures in both civil and criminal cases. Includes diagrams of the federal and state judicial systems and a glossary of legal terms.

2. Badner, Jeffrey A. New York Handbook on Small Claims Courts. Hawthorn Books (1975), $4.95. 158 pp.; paperback, grades 10-12.

3. Bloomstein, Morris J. Verdict: The Jury System. Dodd, Mead and Company (1972), $1.95. 184 pp.; paperback; grades 9-12.

4. Frankfurter, Felix. The Case of Sacco and Vanzetti. Grossett and Dunlop, Inc. (1961), $2.50. 118 pp; paperback; grades 11-12.

5. Habenstreit, Barbara. Changing America and the Supreme Court. Julian Messner (1974), $5.29. 192 pp.; hardback, grades 5-12.

   Traces the history of the U.S. Supreme Court and analyses many changes in its power, jurisdiction, and rulings.

6. Mills, James. The Prosecutor. Pocket Books, Inc. (1970), $.95. 186 pp.; paperback; grades 10-12.

7. Nizer, Louis. The Jury Returns. Pocket Books, Inc. (1968), $1.25, 438 pp.; paperback; grades 9-12.

8. Parker, Frank. The Law and the Poor. Orbis Books (1973), $4.95. 217 pp.; paperback; grades 10-12.

9. Schwartz, Helene E. Lawyering. Farrar, Straus, and Giroux (1975), $10.00. 308 pp.; hardback; grades 10-12.

   Autobiography of the career of a woman lawyer. Describes the litigation process and the practical concerns of lawyers, especially those who happen to be women.

10. Starr, Isidore. The American Judicial System. (Oxford Spectrum Series). Oxford Book Company, Inc. (1972), $1.68. 116 pp. paperback; text; grades 9-12.

    Comprehensive, easily understood discussion of federal courts, with emphasis on the history and operation of the Supreme Court. Discussion questions and activities suggested.

11. Uris, Leon. QB VII. Bantam Books (1972), $1.75. 426 pp.; paperback; grades 10-12.

Novel about a libel suit initiated by an English doctor accused of committing war crimes at a concentration camp during World War II. Presents a detailed account of the litigation process.

Audio-Visual Materials

1. Adversary Process (The). Law in American Society Foundation (1972). Sound slides (with cassette only), guide, 15 min; for teachers. Free loan (limited supply).

   Analyzes various aspects of the adversary system and fact-finding procedures. Makes distinction between criminal and civil trials, trial courts and appellate courts, and state and federal court systems.

2. Crime and Justice. Teaching Resources Films. Sound filmstrip, guide, 14 min.; grades 7-12. Sale: $11.50 (with record); $12.50 (with cassette).

   Discussion of need for improvement of police, courts, and prisons.

3. Crime of Our Courts (The). Westinghouse Learning Films (Group W Productions, Paul Altmeyer, 1971). 16 mm. film, 50 min.; grades 9-12. Sale: $550.00; rental: $60.00.

   An award-winning documentary revealing the injustices existing in our overcrowded court system.

4. Fair Trial. Xerox Education Publications (1973). Sound filmstrip, student source books, duplicating masters, guide, 20 min.; grades 7-12. Sale: $39.95.

   Extensive examination of the evolution of concepts of fair trial, from trial by ordeal through plea bargaining and the right to have counsel.

5. Free Press v. Fair Trial by Jury: The Sheppard Case. Encyclopedia Britannica Educational Corporation (1969). 16 mm. film, guide, 27 min.; grades 9-12. (b/w): Sale: $185.00, rental: $10.00; (c) Sale: $360.00; rental: $17.00.

6. Jury and Juror: Function and Responsibility. Film Fair Communications (1974). 16 mm. film; 26 min; grades 7-12. Sale: $300.00; rental: $30.00.

7. Justice: A Question of Rights. Law in American Society Foundation (1972). Sound slides (with cassette only), guide, 15 min.; grades 7-12. Free loan (limited supply).

   Presents a history of the development of the juvenile court, including major decisions affecting it, while explaining terms and procedures relating to juvenile due process.

8. Justice Game (The). Schloat Productions, Inc. (1974). 4 sound filmstrips, guide, 7-9 min. each; grades 9-12. Sale: $70.00 (with records); $85.00 (with cassettes).

Part I deals with procedures from police interrogations of witnesses through booking; Part II discusses problems society faces when trials are delayed due to congestion of court calendars; Part III dramatizes the problems of the poor in obtaining justice; Part IV deals with plea bargaining and the question of availability of swift and equal due process.

9. Justice Under Law: The Gideon Case. Encyclopedia Britannica Educational Corporation (1967). 16 mm. film; guide; 23 min; grades 9-12. (b/w) Sale: $150.00; rental $9.00; (c) Sale: $290.00; rental: $13.50.

Presents the story of this landmark case in which an indigent defendant, who was convicted of a non-capital offense without benefit of counsel, appealed successfully to the U.S. Supreme Court for his right to legal representation.

10. Right Hand of the Court (The). Aims Instructional Media Services, Inc. (1970). 16 mm. film; 26 min.; grades 10-12. Sale: $330.00; rental: $40.00.

Presents the role and the duties of the court clerk.

11. Story of a Trial. BFA Educational Media (1966). 16 mm. film, 22 min.; grades 4-12. Sale: $265.00; rental: $15.00.

This film follows a petty theft case involving two adult males and demonstrates their rights which are protected during arrest; arraigbment, and trial.

12. This Honorable Court: The Supreme Court of the United States. Guidance Associates (1966). 2 sound filmstrips; guide, 20-21 min. each; grades 9-12. Sale: $42.50 (with records); $46.50 (with cassettes).

History of the Supreme Court, how it functions, selection of cases, and some controversial decisions.

13. Wheels of Justice (The). Teaching Resources Films (N.Y. Times Company, 1972). Sound filmstrip, record, worksheet master of case studies, guide; 14 min. (sound filmstrip), 10 min. (record); grades 9-12. Sale: $9.00.

Discussion of the problems of overcrowded and inadequate prisons and courts.

14. Youth and the Law Series. Doubleday Multimedia (1973). 6 sound filmstrips, guide; 16-19 min. each; grades 9-12. Sale: $73.50 (with records); $85.50 (with cassettes).

A very comprehensive treatment of law and criminal procedure as it affects both adults and juveniles.

UNIT V. FAIR TRIAL AND THE RIGHTS OF DEFENDANTS

The concept of due process governs the rights of the accused. The provisions of the Constitution on due process are given below. It is important to remember that these provisions have, in their fundamentals but not in every detail, been "incorporated" by a long line of Supreme Court cases into the Fourteenth Amendment so as to put limits on the States as well as on the Federal Government.

A. What are the provisions of the Constitution on due process?

Article I, Section 9: The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Article I, Section 9: No bill of attainder or ex post facto law shall be passed.

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Fifth Amendment: No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war of public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, not be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense.

Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Fourteenth Amendment: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

B. What is the Writ of Habeas Corpus?

This writ is considered the bedrock of liberty. Anybody who is being held without knowledge of the charge against him is entitled to secure an immediate inquiry by a court into the reason for the detention. If no good cause is shown, that person must be released.

If someone is incarcerated unjustly within a State jurisdiction, application for a Writ of Habeas Corpus can be made to a Federal court. Townsend v. Sain, 372 U.S. 293 (1963).

C. What is the prohibition against a Bill of Attainder?

In the seventeenth century the English Parliament felt strong enough in its conflicts with the monarchy to charge some of the royal supporters with treason, pronounce them guilty, sentence them to death and confiscate their estates. The framers of the U.S. Constitution prohibited the passage of these "bills of attainder," as they were called, because they found such a practice to be completely at odds with the idea of the right to a fair trial.

In 1965 in a 5-4 decision, which also contains a good historical summary of bills of attainder, the Supreme Court held unconstitutional a statute that made it a crime for a member of the Communist Party to serve as an officer of a labor union. U.S. v. Brown, 381 U.S. 437 (1965).

D. What is the prohibition against Ex Post Facto laws?

If laws could be passed after the fact (ex post facto), making criminal that which was legal when done, then no one would have any sense of security as to the consequences of his behavior. Tyrannies, ancient and modern, have typically applied such retroactive legislation and punishment to dispose of their enemies and to terrorize their subjects.

The Supreme Court has confined the prohibition to retroactive penal legislation. Calder v. Bull, 3 Dall. 386 (1798).

The President is not so limited, at least in his capacity as wartime Commander-in-Chief. Presidents Roosevelt and Truman agreed in big-power conferences to the creation of the Nuremberg tribunal, which punished acts of Axis leaders that were not previously crimes under International Law. (See In Re Yamashita, 327 U.S. 1 (1946) and Hirota v. Mac Arthur, 338 R.S. 197 (1948).

A law which increases the penalty for an act previously done is prohibited as an ex post facto law. But this does not include, for example, a law which puts an extra penalty on anyone who henceforth commits another crime so as to make him a "persistant offender." Graham v. W. Va., 224 U.S. 616 (1912).

E. What are some additional points in search and seizure?

The salient points of this highly complicated area were discussed in the unit on the police. A few cases are summarized here.

Rochin v. California, 342 U.S. 165 (1952). Los Angeles deputy sheriffs entered the house of a suspected narcotics "pusher," Antonio Rochin. The police went into his bedroom, whereupon Rochin swallowed two capsules. The police had Rochin's stomach pumped and recovered two capsules of morphine. Rochin was charged with illegal possession of narcotics. He moved to have the conviction set aside on the ground that the evidence used to convict him was tainted because it had been obtained illegally. The Supreme Court upheld his argument by holding that such an invasion of a person's internal organs was a shocking affront to civilized society and therefore a violation of constitutional rights.

Katz v. U.S., 389 U.S. 347 (1967). The Supreme Court held that evidence obtained from an eavesdropping device placed on the outside of a public telelphone booth, while the suspect was engaged in conversation within it, was illegally obtained. A defendant may be able to show that he had a right to expect that his privacy would be respected in a public place where he was entitled to be.

De Forte v. Mancusi, 392 U.S. 364 (1968). When a defendant is being prosecuted for a possessory crime (illegal possession) he can challenge the means by which the evidence was seized without having to admit that this evidence belonged to him.

F. What is the prohibition against double jeopardy?

In 1968 the Supreme Court resolved traditional uncertainty in this area by holding that the guarantee against double jeopardy applies to the States as well as to the Federal Government. (Benton v. Maryland, 395 U.S. 784). Noting that abhorrence of double jeopardy goes back to ancient times, the court said that . . ."the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense...."

One can still be prosecuted for the same offense once in a State court and then again in a Federal court (Bartkus v. U.S., 359 U.S. 121 (1959)). Furthermore it is allowed everywhere for the victim of a crime to sue the perpetrator for damages in a civil court, even though there was an acquittal in prior criminal trial.

Because the burden of proof in a civil trial is less stringent, a "preponderance of the evidence" is all that is required), the plaintiff might win damages and then can seek their collection. Helvering v. Mitchell, 303 U.S. 391 (1938).

If a jury cannot agree ("hung jury") or for some other reason a mistrial is declared, another criminal trial is permissible. U.S. v. Perez, 9 Wheat 579 (1824).

G. What is the privilege against self-incrimination?

A defendant's oral or written statement, if made involuntarily (by coercion, or without having been given the Miranda warnings when in custody), cannot be admitted into evidence.

Miranda v. Arizona, 384 U.S. 436 (1966). Ernesto Miranda was arrested and charged with kidnapping and rape. Having signed a confession without having been formally advised of his right to remain silent, he moved to have his conviction set aside. The Supreme Court agreed with Miranda and listed the warnings which must be given to a suspect in custody before he can be questioned by the police.

He has the right to remain silent;

Anything he says may be used against him in a court of law;

He has the right to have an attorney present during questioning;

If he cannot afford an attorney, one will be appointed free.

Once a suspect has been properly warned, he may waive his rights and make a statement. But the waiver must be intelligent and knowing.

If the suspect is not in what a reasonable person would deem to be a custodial situation, no Miranda warnings need be given. People v. Allen, 281 N.Y. 2d 602 (1967).

In grand jury proceedings a defendant can be compelled to sign a waiver of immunity. This means that he must agree to answer the questions asked of him, but he cannot be prosecuted on the basis of his testimony. (Kastigar v. U.S., 406 U.S. 441 (1972)). This is known as testimonial immunity. New York grants the more generous transactional immunity which means that in return for being compelled to testify the defendant cannot be prosecuted for other crimes to which his testimony has linked him. CPL 190.45 (4).

In proceedings other than those of a grand jury or a trial (e.g., in administrative or legislative hearings), the privilege against immunity must be invoked by the person summoned to testify after each question has been asked. California v. Byers, 402 U.S. 424 (1971).

At the trial, if the defendant takes the stand to testify in his own behalf, he must respond to cross-examination. He can then be questioned about previous convictions of crimes similar to that for which he is now being charged, for the purpose of attacking his credibility or in order to show motive. If he refuses to testify, i.e., does not take the stand, no comment can be made to the jury about this refusal, either by the prosecutor or by the judge. Griffin v. California, 380 U.S. 609 (1965).

Jurors may nevertheless take a dim view of a defendant who refuses to testify. A defendant with a record of convictions for the same kind of crime he now stands accused of faces, especially if he is innocent, thus faces a cruel dilemma. Innocent individuals with no record of previous offenses, but who are emotionally fragile, can also be in difficulty as to whether or not they should testify.

Fingerprints, blood samples extracted in proper medical fashion, voice tests and other direct physical evidence not obtained in a shocking way are admissible as evidence. Such evidence is not protected by the privilege against incrimination. Schmerber v. California, 384 U.S. 757 (1966).

H. What cases have established precedents for the right to counsel?

1. Gideon v. Wainwright, 372 U.S. 355 (1963). Clarence Gideon was arrested by the Florida police and charged with breaking into a poolroom. Gideon asked the judge to have a lawyer appointed to represent him. The judge denied his request on the ground that in Florida lawyers were only provided to indigents in murder cases. Gideon was convicted. While in prison he appealed his case, contending that because he was without professional counsel he was effectively denied a fair trial. The Supreme Court held that the right to counsel was binding on the States under the Fourteenth Amendment, at least in trials for serious crimes.

2. Escobedo v. Illinois, 378 U.S. 478 (1964). Danny Escobedo was picked up by the Chicago police for the murder of his brother-in-law. He was questioned by the police without having an attorney present to advise him. Escobedo revealed information that was incriminating to himself. After his conviction he moved to have it set aside on the ground that the admissions which had been used against him at the trial were obtained illegally. The Supreme Court agreed with his contention and set aside the conviction.

3. The basic due process requirements for all stages of juvenile proceedings, including the right to counsel, have been held by the Supreme Court to be binding on the States under the Fourteenth Amendment. In re Gault, 387 U.S. 1 (1967).

I. What is the right to a speedy trial as determined by the Supreme Court?

1. Although the Supreme Court is unable to state precisely what constitutes sufficient speed in bringing a defendant to trial, it has stated that in the cases that come before it, four factors will be considered:

length of delay;

the reason for the delay;

the defendant's assertion of his right;

the prejudice to the defendant.

Barker v. Wingo, 407 U.S. 514 (1972).

Note: For the statutory provisions as to speedy trial in New York, see Unit IV, 6. J.

J. What is meant by a public trial?

The origin of the Sixth Amendment's mandate that there be a public trial lies in the revulsion which was felt toward secret proceedings such as the Spanish Inquisition, the English Court of Star Chamber and the French monarchy's abuse of the lettre de cachet.

There are competing claims today between the press and the courts. The former are concerned with the public's right to know, and the latter are concerned about the possible prejudicial effects that publicity can have on trials. The Supreme Court has held that while a balance is desirable, the exercise of freedom of the press "must necessarily be subject to the maintenance of absolute fairness in the judicial process." The Court has forbidden the televising of criminal cases. Estes v. Texas, 381 U.S. 532 (1965).

See Sheppard v. Maxwell, 384 U.S. 333 (1966). This is the famous "Dr. Sam Sheppard" case.

K. What rules must be observed in identifying a suspect by a lineup or other methods?

The Supreme Court has held that a pre-trial identification proceeding is a "critical" stage in a criminal prosecution. Unless the defendant has made an intelligent, knowing waiver, an attorney must be present at such a proceeding. This applies only when criminal proceedings have been started. U.S. v. Wade, 388 U.S. 218 (1967).

Counsel for defendant need not be present at a photo identification. U.S. v. Ash, 413 U.S. 300 (1973).

Due process is denied to a defendant if the lineup identification is "unnecessarily suggestive and conducive to irreparable mistaken identification." Stovall v. Denno, 388 U.S. 293 (1967).

If the prosecution can show by clear and convincing evidence that a witness at the trial is able to identify the accused from an independent source, the identification will be admitted into evidence despite the fact that the lineup identification could not be admitted. People v. Ballot, 20 N.Y. 2d 600 (1967).

L. What is meant by no cruel and unusual punishment?

The Supreme Court has held that the Eighth Amendment bans "torture and all (other forms of punishment) in the same line of cruelty." Wilkerson v. Utah, 99 U.S. 130 (1879).

The Court did not find that there was "cruel and unusual punishment" when a man who was sentenced to death by electrocution had to await a second execution attempt because of an accidental failure of electrical equipment. Louisiana v. Resweber, 329 U.S. 459 (1947).

Some members of the Supreme Court, but not a majority, have argued that the death penalty is per se a cruel and unusual punishment and should be declared unconstitutional.

M. What points apply to admitting evidence and deciding who has the burden of proof?

The Federal and New York laws of evidence prohibit the introduction of a defendant's prior criminal record into evidence at a trial. The reason for this is that the jury should not be swayed by evidence irrelevant to the case they are trying. A prior record might prejudice the jury against the defendant. An exception occurs when the defendant testifies: he can be asked about similar previous crimes to challenge his credibility.

A "Huntley Hearing" is a pre-trial procedure, presided over by a judge, in which the defense attorney seeks to move for suppression of admissions made by the defendant on the ground that they were illegally obtained. The prosecution must show by "clear and convincing" evidence (somewhere between "preponderance" and "beyond a reasonable doubt") that the defendant knowingly and intelligently waived his Fifth Amendment rights and/or that the Miranda warnings were not properly given.

A "Wade Hearing" is a pre-trial procedure in which the defense attorney seeks to overturn a lineup identification as being unconstitutionally defective. The prosecuting attorney argues that it was untainted.

At a "Suppression Hearing" the defense attorney seeks to have evidence obtained in a search declared inadmissable. The defense has the burden of proof, to show by a "preponderance of the evidence" that the search was unreasonable.

The prosecution always has the burden of proof to show by "clear and convincing evidence," that the defendant voluntarily, intelligently, deliberately waived any of his rights under the Fourth, Fifth, or Sixth Amendments.

Unit V. Fair Trial and The Rights of Defendants

Bibliography

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   Investigates laws and their functions, discusses criminal procedure and legal decisions affecting the rights of the accused, and includes a general discussion of crime in the United States. Photos, charts, and questions.

2. Channing L. Bete Company, Inc.: Know Your Legal Rights. (1969), $.25. 15 pp.; paperback; grades 7-12.

   Simple presentation of basic rights under criminal and civil law. Tells when to contact a lawyer. Cartoons.

3. Corwin, Edward S.. The Constitution and What It Means Today. (revised by Harold W. Chase and Craig R. Ducat). Princeton University Press (13th edition, 1973). The 1976 Supplement to this edition covers Supreme Court decisions from 1973-1976. 487 pp.; paperback; for teacher reference. Extremely helpful, concise and lucid.

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   A course in the practical aspects of law, aimed at teaching students how to make the law work for them. Suggests many kinds of open-ended learning strategies, including mock trials. Good not only for criminal matters but for consumerism, family law, housing, and individual rights.

7. Norwick, Kenneth P. Your Legal Rights: Making the Law Work for You. John Day Company (1975), $7.95. 247 pp.; hardback; grades 8-12.

8. Reader's Digest. You and the Law. Reader's Digest Association, Inc. (1973), $10.98. 863 pp.; hardback, reference; grades 10-12.

   Reference work giving concise summaries on all kinds of law and including charts showing various state and local statutes. Useful discussion of the criminal process and the rights of the accused.

9. Rosengart, Oliver and Gail Weinheimer. The Rights of Suspects: The Basic ACLU Guide to a Suspect's Rights. Avon Books (1974), $.95. 122 pp.; paperback; grades 10-12.

Uses a question and answer format. Appendix includes a sample writ of habeas corpus and a sample petition for the writ.

10. Waddington, Lawrence C. Arrest, Search, and Seizure. Glencoe Press (1974), $9.95. 227 pp.; hardback; text; grade 12.

A thorough discussion of the Fourth Amendment protection against unreasonable search and seizure.

Audio-Visual Materials

1. Arrest and Seize. Walt Disney Educational Media Company (1973). 16 mm. film; guide; 16 min.; grades 7-12. Long term license agreement. $225.00; rental: $15.00.

   A "stop action" film in which the police stop a boy and girl driving away from the vicinity of a crime and discover marijuana in their car.

2. Constitution and Fair Procedure (The): Indiana University Audio-Visual Center (1959). 16 mm. film; 29 min.; grades 10-12. Sale: $165.00; rental: $9.50.

   Presents Layra v. Denno, in which a man convicted of murder and sentenced to death, takes his case to the Supreme Court, claiming that his original confession was obtained under conditions which denied him procedural due process.

3. Crimes and Justice: Rights of the Accused. Law in American Society Foundation (1972). Sound slides (with cassette only), guide; 15 min.; grades 7-12. Free loan (limited supply).

4. Interrogation and Counsel. Churchill Films (1967). 16 mm.; film; guide; 22 min.; grades 9-12. Sale: $240.00; rental: $25.00.

5. Justice Delayed, Justice Denied. Correctional Service of Minnesota (CBS, John Sharnik, 1971). 16 mm. film; 40 min.; grades 10-12. Rental: $12.00.

6. Justice, Liberty and Law. Churchill Films (1968). 16 mm. film; guide; 22 min.; grades 9-12. Sale: $240.00; rental: $25.00.

   Our present legal system is contrasted to the Colonial and early British systems. The rights of juveniles are discussed, with a dramatization of the Gault case.

7. Juvenile Thief. Guidance Associates (1972). Sound filmstrip; student manuals; guide; 5 min.; grades 9-12. Sale: 21.00 (with record); $23.50 (with cassette).

   This set examines the constitutional guarantees against unwarranted search and improperly obtained confessions.

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   Search and seizure problems are treated in a fictitious case.

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    Deals with electronic eavesdropping devices and whether evidence gathered by them can be used to justify a search warrant.

12. Under Arrest! Operation: Street Encounter. The Nelson Company (1972). 16 mm. film; 15 min.; grades 9-12. Sale: $130.00.

13. Witches of Salem (The): The Horror and the Hope. Learning Corporation of America. (Azzarella Unlimited, 1972). 16 mm. film; guide; 35 min.; grades 7-12. Sale: $390.00; rental: $35.00.

UNIT VI - THE PENAL SYSTEM

A. How large a part of our population is governed by the penal system?

The penal system in the U.S. is responsible for 1.3 million people. Four hundred fifty thousand people are housed in prisons. The others are supervised by parole officers.

B. What is a prison?

Webster's New World Dictionary, p. 1130, defines prison as "A place where persons are confined - a building usually with cells where convicted criminals are confined or where accused persons are held while waiting trial.

C. How were prisons used?

1. Prisons were used as places of punishment for the offender. His punishment was also meant to deter others from committing offenses. Sentences were, therefore, physical punishments publicly performed or, for milder offenses, simple exposure to public ridicule.

   Examples:

   public whipping

   being tied to a stake or pole

   sitting in "stocks"

   public "dunking"

2. Prisons were used for economic benefits obtained from the labor of prisoners.

   Examples:

   rowing of warships by gallery slave prisoners

   workshops of various kinds in which prisoners manufacture products

   prisoners working on roadgangs

   prisoners working on farms

3. Prisons were used as institutions for the insane, the elderly and the incurably ill. Belief in possession by evil devils was a motivating rationale for some of this treatment.

4. Prisons were used as correctional institutions. This use of prisons is a later idea. It developed with modern penology. The hope was that individuals could be rehabilitated.

   Medical and psychological attention along with vocational training were regarded as necessary and useful means to this end.

   The term "reformatory" is derived from this viewpoint.

D. How do prisons differ?

1. Federal Prisons are funded and operated from the federal budget. They house those who have been convicted of federal crimes by the Federal courts.

2. State Prisons in New York exist for persons who are 18 or over, who have been convicted of violations of State laws. State prisons may serve as detention centers for those awaiting preliminary hearings if municipal detention centers are limited in space.

3. In Municipal Prisons most of the prisoners are awaiting trial or have been sentenced for violations or misdemeanors.

4. There are different types of prisons classified by degree of security.

   Maximum Security is for hard core criminals who are constantly returned to prison and who show little or no remorse; they have committed the most serious felonies.

   In Security Prisons the degree of security is less if the nature of the offenses committed by the inmates is less severe or if they are relatively well-behaved.

   In Minimum Security prisons there are few guards. Prisoners are allowed more released visitation rights. There are rooms rather than cells. The inmates have shown possibility of being rehabilitated, are often better educated, and are not considered to be hard core criminals.

E. What is the basic structure of the community corrections system?

CHART OF THE COMMUNITY CORRECTIONS SYSTEM

POLICE

SCREENING OF OFFENDERS

BY COMMITTING JUDGE

PROBATION
(community based programs)

COMMUNITY ORGANIZATIONS

- recreational
- religious
- educational
- vocational

THERAPY PROGRAMS

- group
- family
- individual

RESIDENTIAL FACILITIES

- group
- individual

CASELOAD SUPERVISION

- intensive
- regular

STATE AGENCY

- screening
- resources

INSTITUTIONAL SYSTEM

- camps
- open units
- security units

PAROLE

F. What happens to the prisoner on his arrival in prison?

Prisoners are checked in. Papers are transferred. Each prisoner is placed in a diagnostic center where he is given a series of exams.

The prisoner is assigned a number. He is stripped and searched. He takes a shower and then is given a closely cropped haircut.

He may be assigned a cell. He is informed of prison regulations.

Several days of medical and psychological testing will follow.

G. What is life like in prison?

The most difficult aspects of prison life are the boredom and the routines which go on unchanged year after year.

A sample schedule (from Leonard Orland, Prisons - Houses of Darkness, chapter 5, p. 65):

6:00 A.M. - wake up and get ready for breakfast
6:10 " - clean cells and be counted
6:30 " - breakfast
7:00 " - back to cell
7:30 " - sick call
7:45 " - work call
8:00 " - begin work

NOON LUNCH

12:30 P.M. - back to cell to be counted
1:00 " - back to work
3:15 " - cell or recreation
4:00 " - line up for supper
4:15 " - march to mess hall
5:00 " - lock-up for the night; head count
7:30 " - bell rings; no more talking
10:00 " - lights out
11:00 " - radio earphones off; absolute quiet

Some privileges may be granted such as attending special entertainment events brought to the prison, or being allowed to watch TV programs.

H. What prison rules (recognized in the U.N. World Standard) are generally accepted in our country's prisons?

1. No discrimination on grounds of race, religion, color, sex, national origin, property, birth, etc.

2. The institution shall provide a prisoner with a qualified representative of his religious beliefs, and allow the prisoner to observe his religion as far as is practicable under daily prison routine.

3. There should be an official registration book with numbered pages concerning each prisoners':

   identity

   reasons for commitment and by what authority

   day and hour of admission and release

4. Prisoners shall be kept in separate institutions categorized by age, sex, criminal record:

   men and women held separately,

   segregation of prisoners with little or no previous incarceration experience from those with extensive experience,

   separation of civil offenders (e.g., those who have been cited for contempt of court in non-criminal proceedings) from criminal offenders,

   separation of youths and adults.

5. Ideally, there should be individual cells or rooms. If there is more than one person in a cell a proper area for ventilation must be provided. Overcrowding should be allowed only for temporary, emergency reasons.

6. Where dormitories are used, compatibility of prisoners should be considered e.g., two men who are known to be violently hostile toward each other should not be confined together.

7. There should be proper lighting and ventilation generally.

8. Sanitary installations should be adequate.

9. Bathing facilities and water temperature should be adequate.

10. Prisoners can be required to keep their bodies clean and their appearance in compliance with prison regulations,

11. Prisoner's clothing should be suitable, comfortable and not degrading. If a prisoner is removed from prison he should be provided with clothing that will make him inconspicuous in the general population.

12. The prisoner shall be provided with nutritious food at regular hours, and with drinking water at all times.

13. Recreational areas and equipment shall be provided.

14. Every institution shall provide or have access to proper medical treatment for prisoners. Special treatment shall be provided for women prisoners and for infants born to them.

15. Instruments of restraint, such as handcuffs, shall be used only for restraint, not for punishment.

16. Upon admission to the prison, written and/or oral information as to all prison rules and expected standards of discipline shall be made known to each prisoner.

17. Prisoners shall be allowed to have contact with their families and with reputable friends through correspondence and visits. Attorneys shall have access to their clients and a place where confidential discussions can be held.

18. Every institution shall have a library with books and periodicals so that inmates can keep themselves informed about the outside world.

19. Personal property of the prisoner shall be retained and returned to him upon his release.

20. Upon his death, illness or injury, the prisoner's relatives shall be informed.

I. What are some recent rulings on issues in which prisoners' rights and prison authorities' powers may conflict?

1. The substantial governmental interests of security, order and rehabilitation can be invoked to justify the censorship of inmates' mail by prison authorities. However, this does not allow for unlimited discretion. Procunier v. Martinez.

2. First Amendment rights of freedom of expression are generally not upheld for prisoners. But in Sostre v. McGinnis 442 F. 2d 178 2d Cir,(1971) the Federal Court of Appeals, Second Circuit, refused to sanction punishment of a prisoner for having inflammatory writings in his own cell. In this case, however, the court added that these materials could be confiscated if reasonably deemed to be a threat to prison security.

3. Search and Seizure: To date, inmates have no Constitutional protection against arbitrary searches. The Supreme Court has allowed wiretapping of conversations in prison visiting rooms, done without the consent of the conversing parties. Lanza v. New York, 370 U.S 139 (1972).

4. Solitary Confinement. This is not regarded by the courts as "cruel and unusual" punishment per se. But courts have in some cases found that periods of solitary confinement were disproportionate to the gravity of the infraction of prison rules, or that the conditions of a particular confinement were disproporbarbaric and therefore illegal. See Wright v. McMann 387F 2d 519, 2d Cir.,(1967) where the prisoner in solitary confinement was denuded, exposed to winter weather, and deprived of soap and toilet paper.

5. Physical Abuse by Guards. The Federal Court of Appeals, Second Circuit (which includes all of New York State) has held that under certain circumstances a prisoner may be able to sue a guard who has sadistically assaulted him. Johnson v. Glick, 481 F. 2d 1028 2d Cir.,(1973). But generally, courts accept explanations by prison authorities that use of force was required to maintain order.

6. Parole Revocation Hearings. The U.S. Supreme Court decided in 1972 that parolees are entitled to certain procedural due process rights in revocation hearings. Morrisey v. Brewer, 408 U.S. 471 . These include:

   a. written notice of the alleged parole violations;

   b. disclosure to the parolee of the evidence against him;

   c. opportunity to be heard and to present witnesses and evidence of a documentary sort;

   d. the right to confront and cross-examine adverse witnesses (but for good cause the hearing officer may disallow such confrontation);

   e. a "neutral and detached" hearing body;

   f. a written statement by the members of the hearing board showing what evidence they relied on and the reasons for their decision.

7. Probation Revocation Hearings. The same procedural safeguards that were enunciated in the Morrisey case above were extended to probationers involved in revocation hearings in the 1973 case of Gagnon v. Scarpelli 411 U.S. 778 . In addition, the Supreme Court held that under certain circumstances, to be determined on a case-by-case basis, the probationer might have the right to counsel.

8. Prison Disciplinary Proceedings. The Supreme Court has held that there are fewer procedural due process requirements in prison disciplinary proceedings. Wolff v. McDonnell, 418 U.S. 539 (1974). Safeguards must include:

> at least 24 hours advance notice, in writing, of the alleged violation;
>
> a written statement of the factfinders showing the evidence relied upon and the reasons for their decision;
>
> the right to call witnesses and present documentary evidence unless prison officials decide that there would be undue hazard to institutional safety or to correctional goals in permitting this.
>
> The Supreme Court specifically held that such serious hazards would arise if prisoners were allowed to confront and cross-examine adverse witnesses or to have appointed counsel present.

9. Jail-House Lawyering. In 1969 the Supreme Court allowed the writ of habeas corpus to be used to invalidate a prison regulation which prohibited legal work done by "jailhouse-lawyers"; a prisoner who had violated this regulation was ordered to be released from solitary confinement. Johnson v. Avery, 393 U.S. 483.

10. Restoration of Rights to Offenders. In many ways former criminal offenders suffer permanent disabilities. The New York State Correction Law provides that there shall generally be no discrimination against such persons who apply for licenses or employment unless:

> there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
>
> the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. Section 752 .

In the event that a former criminal offender is denied a license or employment by a public agency or a private employer, he may request and then must receive, within 30 days, "a written statement setting forth the reasons for such denial." (New York State Correction Law, Section 754.) Appeal can be taken against a public agency through an Article 28 proceeding under the New York Civil Practice Law and Rules; or against a private employer by going to the New York City Commission on Human Rights. New York State Correction Law, Section 755 .

J. What conditions must a New York State prisoner agree to meet before he can be paroled?

1. He must go to the place to which he has been released within 24 hours and report to the Department of Correctional Services.

2. He cannot leave the state without the permission of the parole officer.

3. He must comply with the instructions of his parole officer and make oral or written reports as directed.

4. He must permit the parole officer to visit his residence or place of employment. He may not change his residence without prior approval from the parole officer. He must obey a curfew if so directed.

5. He must avoid the excessive use of alcoholic beverages or abstain altogether if so directed.

6. He must make every effort to find employment. He must report the loss of a job or a change of employment. He may not quit a job without permission from his parole officer.

7. He must lead a law-abiding life. He must not congregate with people who have criminal records. He must support his dependents.

8. He must consult his parole officer before obtaining a marriage license.

9. He may not, without permission, carry out of the facility from which he is being released on parole, any written or oral message or any object or property.

10. He must advise the parole officer of the status of his driver's license.

11. He may not own, purchase, or have in his possession firearms or other deadly weapons.

12. He may not use, possess, or purchase any illegal drugs.

13. He must waive extradition and thus will not be able to raise a legal challenge to any request by the New York Board of Parole to have him returned to New York by the authorities of another State.

14. He must agree to any other special conditions which may be imposed by the Parole Board.

Unit VI - The Penal System

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Audio-Visual Materials

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2. In and Out - The Revolving Door. Correctional Service of Minnesota. Tape cassette, guide, 59 min.; grades 10-12. Sale: $10.00.

   Five ex-offenders describe their experiences in prison, the motives behind their crimes, the effect of incarceration on their future lives, and problems of readjustment.

3. Law in a Democracy: Consequences for the Convicted. Guidance Associates (1973). 2 sound filmstrips, guide, 14 min. each; grades 9-12. Sale: $41.50 (with records); $46.50 (with cassettes).

4. Prison. Indiana University Audio-Visual Center. (NET, 1971). 16 mm. film; 59 min.; grades 9-12. Sale: $265.00; rental: $15.25.

   A typical day in a prison in Bucks County, Pennsylvania.

5. Voices Inside (The). Correctional Service of Minnesota. (NBC, 1969). 16 mm. film; 22 min.; grades 9-12. Rental: $12.00.

6. Young Convicts (The): Prison in the Streets. Xerox Films. (ABC News, 1973). 16 mm. film; guide; 36 min.; grades 7-12. Sale: $400.00.

   Rehabilitating juveniles through halfway houses and group homes within normal communities. Includes some history of penology in the United States.

UNIT VII - INSTRUCTIONAL STRATEGIES FOR LAW STUDIES

Note: This discussion of instructional strategies is heavily indebted to the excellent summary which appears in the March, 1977 issue of Social Education (David T. Naylor, "Law Studies in the Schools: a compendium of Instructional Strategies," pp. 170-178).

Introducing Law. The word "law" evokes different feelings in people, and quite often these feelings are negative. Leaders in the movement for law-related education such as Isidore Starr suggest that teachers keep their introductions to law studies as non-threatening as possible. Two techniques are frequently cited: the "mindwalk" and the "critical incident." An example of each is given in the lessons which follow.

Lesson 1

How Law Affects Our Lives

Instructional Strategy:
Mindwalk

> Mindwalk: This could be called "brainstorming." Students discover for themselves how pervasive the law is in our lives by looking for legal aspects in the most prosaic account of someone's typical day.

"A Day in the Life of Tom Phillips"

Tom Phillips is thirteen years old. He lives at 2893 Sycamore Street, Sweet Gum, Ohio with his family, a mother and father, a brother, and a dog. Today was a school day, so Tom got up when his mother called him at 7:00 a.m. He washed his face with Dial soap, brushed his teeth with Crest toothpaste, and then got dressed for school.

Soon Tom came to the kitchen. He turned on the radio and sat down to eat a breakfast of orange juice, a bowl of Cheerios, toast, and a quart of milk. When he finished eating, Tom attached a leash to his dog's collar and took the dog for a walk around the block.

Returning to his house, Tom heard the sound of the school bus. He grabbed his books and ran to meet the bus which had stopped in front of his house, its red lights flashing. Tom boarded the bus and greeted the bus driver with a friendly smile. Another day of school was about to begin.

Classroom Procedures:

1. Distribute copies of the story of each student. Read the story aloud.

2. Ask students to re-read the story, this time underlining each instance in which law is involved in the story. (Note: For purposes of illustration, such instances are underlined above.)

3. Cite the following example: "Tom Phillips' should be underlined. Your name is your identity in society. It is given to you at birth and recorded on a birth certificate, a legal document. It determines, to a large extent, all of your legal rights and responsibilities."

4. Discuss each of the situations identified by the students, using them as springboards to illustrate how much law impacts upon the daily lives of students. Examples include:

   . address (zoning, taxes, schools, local ordinances, etc.)

   . name (family, inheritance, marriage, divorce; brand names)

   . dog (type and treatment of pet, inoculation, leash law, potential liability, curbing dog, etc.)

5. When students have completed the lesson, ask them to make a collage illustrating the various ways law affects their lives. Display the collage in a prominent place in the classroom.

Lesson 2

Law and the Schools - The Right to Paddle Students

Instructional Strategy:
Critical Incident

> Critical Incident: This technique uses a newspaper article about some actual or simulated event which includes facts and divergent views. Or the divergent views can be set forth in "Letters to the Editor." The purpose of this technique is to introduce the study of a particular legal topic.

SUPREME COURT UPHOLDS PADDLING OF SCHOOLCHILDREN

Washington, D.C., October 21, 1975. Teachers may paddle students who misbehave in school. That was the message from the Supreme Court of the United States as yesterday it upheld a lower court ruling in the case of Baker v. Owen. By its action, the court agreed that paddling by school officials, when done with proper restraint and under proper circumstances, does not constitute "cruel and unusual punishment" and may be administered even if the child's parents oppose each punishment.

LETTERS TO THE EDITOR

Dear Sir:

How we can permit teachers to hit students with wooden paddles is beyond me. Education is based on trust and respect, not fear and punishment. The rule upheld by the Supreme Court today is a disgrace. Teachers who feel they must hit children in order to teach them have no business being in the schools.

Mr. Myron MacDonald

Dear Sir:

Hooray for the Supreme Court! The members of that court finally used some commonsense for a change. Everyone knows discipline is needed if students are to learn. For too long we have spared the rod. Now, with this decision, hopefully it will be used again. Who knows? Maybe students will actually begin to respect their teachers again and realize that school is a place to learn, not misbehave.

Ms. Alberta Thomas

Dear Sir:

Only parents have the right to physically punish their children. No one else should be able to do this. The Supreme Court's decision is but one more step in a long series of court decisions that are designed to weaken the rights of parents. How long will America permit this to continue?

Mrs. Paula Brown

Classroom Procedures:

1. Distribute copies of the materials above to each student.

2. After students have read them, ask the following questions:

   - Do you feel that teachers should be permitted to paddle students who misbehave in school?

   - Should parents have a right to prevent teachers from paddling their children?

3. After discussing the issues raised in the article and in the accompanying "letters to the editor," point out that the Supreme Court of the United States, by upholding a lower court decision, makes it possible for teachers to paddle students in states where this practice is not forbidden by law.

4. Next, divide students into small groups with five to seven members. Indicate that each group is to consider itself a board of education with the responsibility for determining rules for paddling students in the school district.

5. Ask each group to write rules which describe:

   . if paddling is or is not to be permitted;

   . if permitted, the procedures to be employed (e.g., who may be paddled, for what reasons, by whom, under what circumstances).

6. Discuss the rules proposed by each of the "school boards" and obtain a class consensus.

7. Distribute the actual or an abbreviated version of the Baker v. Owen decision rendered by the Federal District Court in North Carolina. (The Supreme Court merely affirmed the District Court decision.) Analyze the reasons given by the court and compare the circumstances in which the court was willing to tolerate paddling with the rules for paddling developed by the class.

Exploring the Nature of Law. Students are asked to consider what things would be like if there were no laws or rules. William Golding's novel Lord of the Flies is good for students at the secondary level. Then students are asked to evaluate laws that have been enacted in order to sharpen their critical thinking and become aware that laws do not operate in a vacuum. It is hoped that students will be stimulated to learn about historical context and understand why particular laws were enacted.

Lesson 3

Laws Past and Present

Instructional Strategy:
Forced Choice

Instructions:

Consider each of the laws below. In the space to the left of each, place the letter of the response you feel is most appropriate, as follows:

VN = Very Necessary Law
N = Necessary Law
U = Undecided
NVN = Not a Very Necessary Law
NN = Not a Necessary Law at All

_____1. The manufacture, sale or transportation of intoxicating liquors for beverage purposes is prohibited.

_____2. No employer may refuse to hire or to discharge or otherwise discriminate against any individual because of that person's race, color, religion, sex or national origin.

_____3. No person shall willfully conduct himself or herself in a noisy, boisterous, rude, insulting or other disorderly manner with the intent to abuse or annoy another person.

_____4. To be eligible to vote in an election, every citizen must provide evidence of an ability to read and interpret the Constitution of the United States.

_____5. No person who has not yet attained sixteen years of age may appear on the streets of this municipality between the hours of 8:00 P.M. and 6:30 A.M., inclusive, unless accompanied by a parent or legal guardian.

_____6. No commercial establishment may conduct business in any manner during the period beginning 2:00 A.M. Sunday and ending 6:00 A.M. Monday.

_____7. All parents and guardians of children residing in this State shall cause such to be instructed in reading and writing, so that they may be able to read the Scriptures and to write by the time they attain to twelve years of age.

Classroom Procedures:

1. Distribute copies of the above to all students in the class. Instruct students to read and complete the exercise at their desks.

2. Using a show of hands, tally student responses and record them on the chalkboard.

3. Using class responses, group the seven laws according to the five categories listed. Upon completion, ask students to do likewise with their own responses.

4. For each category, pose the following questions:

   . What do the laws in this category have in common with each other?

   . How do the laws in this category differ from the laws placed in other categories?

   . In what ways do the laws categorized as "necessary" or "very necessary" differ from those categorized as "not very necessary" or "not necessary at all"?

   . What qualities should a "good" law possess?

5. Ask students to hypothesize:

   . why each of the laws was passed;

   . at what time in America's history each law may have been passed; and,

   . the legal status of these laws today.

Examining Legal Issues. The case method, used for so long a time in law schools, is being widely heralded as a powerful tool for making students aware of fundamental concepts and for developing their analytical skills. A teacher selects legal cases in order to show how legal principles such as freedom of expression are applied to specific disputes.

Students are asked to identify and think about (1) the facts of a case; (2) the point (s) at issue; (3) the competing arguments; (4) the decision that was rendered; (5) the reasons for the decision; and (6) the implications of the decision.

Varying combinations of the above six elements might be presented, leaving it to the students to fill in the rest and to offer reasons for their answers. An extended discussion of the case method can be found in the highly regarded work of Ronald A. Gerlach and Lynn W. Lamprecht, Teaching About the Law (W.H. Anderson Co., 1975; 354 pp.; hardback; $9.95), pp. 147-71.

Lesson 4

The Federal "Anti-Riot" Law

Instructional Strategy:
Case Study

Classroom Procedures:

1. Set the scene for students by indicating:

> In the mid-sixties, a number of civil disturbances eruped in cities throughout the United States. Among the most publicized and extensive were those in Watts (1965) and Newark (1967). Many people were shocked and outraged by these outbreaks and demanded that they be stopped. A prevalent, though not necessarily correct, view was that these civil disturbances were caused by a small but influential group of "professional rabble-rousers." These events led to the passage of a federal anti-riot law in 1968, the law used to prosecute the defendants in the famous Chicago 8 (or "7") trial. By investigating the events and climate of America during the period 1965-8, the circumstances which led to the passage of Public Law 90-284, and the Chicago 8 trial and resulting appeal, we can learn much about the American legal system.

2. Assign different students responsibility for reading articles from newspapers and magazines published in the period 1965-8 to:

   . report to the class on specific civil disturbances (e.g., Watts in 1965; Chicago, New York, and Jacksonville in 1966; Newark and Detroit in 1967);

   . present to the class the mood of America at this time as revealed in reports of public opinion polls (e.g., Gallup and Harris polls) and newspaper and magazine editorials; and

   . identify and report on the activities of such people as H. Rap Brown, Martin Luther King, Jr., Stokely Carmichael, Abbie Hoffman and others.

3. Following a presentation and discussion of these findings, obtain (or assign this responsibility to several students) and share with the class excerpts from the Congressional Record during the period 1965-8 which:

   . reveal Congressional concerns about the situation:

   . indicate several legislative proposals designed to prevent outbreaks of this nature in the future; and,

   . show the concerns and arguments of both the proponents and opponents of Public Law 90-284, the federal "anti-riot" law, especially the views of Rep. William Cramer (R., Fla.) and Rep. Emanuel Celler (D., N.Y.).

4. Next, analyze the following summary of Public Law 90-284:

   One of the provisions of Public Law 90-284, popularly known as the federal anti-riot law, sought to restrict the freedom of prominent disenters to travel freely within the United States. It provided that an individual may be subject to a $10,000 fine and/or five years imprisonment if that person either travels between states or uses "the mail, telegraph, telephone, radio or television, with intent--

   (a) to incite a riot; or

   (b) to organize, promote, encourage, participate in, or carry on a riot; or

   (c) to commit any act of violence in furtherance of a riot...".

5. After students have reviewed the law, ask other students to report to the class on:

   . the events which occurred in Chicago during the week of the 1968 Democratic National Convention (Use 1968 newspapers and magazines.);

   . the Walker Report to the National Commission on the Causes and Prevention of Violence, Rights in Conflict;

   . accounts of the Chicago 8 trial, United States v. Dellinger (1970).

   The Encyclopedia Brittannica offers outstanding films on important cases in its series, "Our Living Bill of Rights." The teacher can stop a film at certain places and ask students to identify and consider the six elements of the case.

Understanding Legal Processes. An understanding of law would be incomplete without some knowledge of and familiarity with legal processes. Field trips, mock trials, simulations and role-playing can do much to acquaint students with legal processes.

The mock trial involves a large number of students playing a variety of roles. While the determination of guilt or innocence (fault or non-fault in a civil trial) seems to be what the trial is about, the serious purpose is to help students to think about issues such as the adversary system, the jury system, and standards of proof. Two highly recommended guides for mock trials are:

Ratcliffe, Robert et. al. Law in a New Land-Teacher's Guide (Houghton Mifflin, 1972), pp. 29-36), and

Gerlach and Lamprecht. Teaching About the Law (W.H. Anderson, 1975), pp. 235-253 .

A wealth of information about games and simulations can be obtained by reference to a catalogue published by the American Bar Association (YEFC, 1155 East 60th Street, Chicago, Illinois 60637). The title is Gaming: An Annotated Catalogue of Law-Related Games and Simulations (1975, 32 pp.; $1.00).

Lesson 5

Does a Defendant Have a Right To Act as His Own Lawyer?

Instructional Strategy:
Moot Court Proceeding

Faretta v. California (1975)

Anthony Faretta was charged with grand theft. At his arraignment in a Los Angeles County Court in California, the judge appointed a public defender to represent Faretta. Prior to the trial, Faretta requested that he be permitted to defend himself. The judge reluctantly granted Faretta's request but indicated that he might reverse his decision if later it appeared that Faretta was unable to adequately represent himself.

Several weeks later, but still prior to the trial, the judge held a hearing to inquire into Faretta's ability to conduct his own defense. When Faretta was unable to answer certain specific questions about points of law, the judge reversed his earlier position, asserting that Faretta had not made an intelligent and knowing waiver of the right to the assistance of counsel. In so doing, the judge also ruled that Faretta had no constitutional right to conduct his own defense.

At his trial, Faretta was represented by a public defender. He was found guilty and sentenced to prison. Faretta appealed his conviction, asserting that he had been deprived of his constitutional right to conduct his own defense, a right guaranteed under the Sixth Amendment.

Classroom Procedures:

1. Review the differences in function and procedure of trial and appellate courts.

2. Divide the class into groups of five students, two to serve as attorneys, three to serve as judges.

3. Give to the students in each group a copy of the Bill of Rights, the Fourteenth Amendment, and the facts presented above. (In some situations, it may be advisable to provide one attorney with the actual or an edited version of the majority opinion of the Supreme Court and the other with the actual or edited version of the dissenting opinion.)

4. Instruct one of the attorneys to prepare arguments in favor of Faretta's position and the other to prepare arguments in opposition to Faretta's position.

5. Give each attorney fifteen minutes to orally present arguments before the three judges. Permit judges to question the attorneys when the judges deem it necessary.

6. Upon the conclusion of the oral arguments, the three judges should meet as a group to formulate an opinion in the case. That opinion or opinions should be given in written form.

7. Compare and contrast the opinions rendered by each of the three-judge panels.

8. Analyze and discuss the strengths and weaknesses of the appellate court procedure.

Clarifying Values and Attitudes About Law. The study of law often brings a realization that one must make choices not simply between good and bad values, but from among good values. One approach to the problem is exemplified in Lawrence Kohlberg's work on moral development. Students are challenged to reassess their values; for example, would they have obeyed the fugitive slave laws (upholding established law) or would they have helped fugitive slaves to escape (appeal to a higher law). Kohlberg postulates a sequence of growth and change in the content of values people hold, ranging from the infantile to that of a Socrates.

Another approach, values clarification, has been made popular by Louis Raths, Sidney Simon and others. The process of valuing is emphasized over the content of valuing. Rank order is a widely used values clarification technique.

Lesson 6

Why We Have Laws

Instructional Strategy:
Values Clarification - Rank Order

Instructions:

Consider the following reasons that are given to explain why we have laws. Place the letter of each reason given in the appropriate space on the line below according to how important the reason is to you. Each reason should be placed on a different line.

Why Do We Have Laws?

- -

Most Important Reason — Least Important Reason

A. To tell us what we can and cannot do.

B. To help us settle disagreements peacefully.

C. To protect us from other people.

D. To make sure that we do what we say we will do.

E. To assure us that all people will be treated fairly.

F. To punish us when we do wrong.

Classroom Procedures:

1. Give the exercise to students. Have each one complete it individually.

2. Obtain a class consensus by a show of hands for each of the six responses.

3. Discuss and analyze the results. Provide an opportunity for individual students to explain reasons for their choices.

4. Ask students to provide specific examples of laws that we have passed for each of the six reasons given.

Forecasting Possible Futures. Students should be encouraged to think about the consequences for society of what they would like to have changed in the law. In the lesson below, students are asked to develop their own societies.

Lesson 7

Law in the 21st Century

Instructional Strategy:
Futuristic Scenarios

Classroom Procedures:

1. At the conclusion of a law studies unit, divide students into four groups and present them with a hypothetical situation set in the 21st century. For example, the following situation might be used at the end of a study of the role of law in American society.

   > It is the year 2001. A recent technological breakthrough has made it possible for government to establish visual and audio monitoring of the daily lives of all citizens. If put into effect, little opportunity will exist for citizens to escape government scrutiny in even the most intimate of their daily affairs. Government officials proclaim that the breakthrough will effectively end crime and permit effective delivery of government services.

2. Give 15-20 minutes for two groups to meet and list all of the possible advantages and for two groups to meet and list all of the possible disadvantages of this situation.

3. At the end of that time period, have the students in each group select what they consider to be the most important points from the list they have compiled.

4. Instruct each group to indicate how the federal Constitution would aid and/or impede making the situation a reality. What changes, if any, would be necessitated?

5. Have each group share the product of its deliberations with the class. Analyze and discuss the possible alternatives provided by each group for dealing with this eventuality.

6. Ask each student to select one of the alternatives presented (or develop another) and to provide a written description of the type of future likely to result from the selected alternative. Students should include the role law will play in the realization of this future society.

Unit VII - Instructional Strategies for Law Studies

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Community Resources

I. Police

1. Youth Aid Division: Lt. Milton Kirschner, 34 ½ East 12th Street, New York, New York 10003, (212) 982-1102.

2. Local precincts may be able to provide assistance.

II. "Lawyers in the Classroom." This widely used service is provided by the New York State Bar Association in cooperation with Open Doors. Contact Jan Anagnost at Open Doors, c/o National Alliance of Business Men, 380 Madison Avenue, New York, New York 10017.

III. The District Attorney's Office in each borough is often able to make arrangements for student tours.

IV. New York City Law-Related Education Council

1. Association of Teachers of Social Studies, c/o Elliott Salow

2. Institute for Legal and Criminal Justice
Education in Secondary Schools
John Jay College of Criminal Justice/New York City Board of Education - High School Division
444 West 56th Street, New York, New York 10019
(212) 247-1600, c/o Dr. Edward Shaughnessy or Dr. Daniel Finneran

3. John F. Kennedy High School Law Studies Program
c/o James Sullivan

4. Open Doors/Law Studies Association
380 Madison Avenue
New York, New York 10017
c/o Dave Bushman, Barry Nelson or Murray Meiselman

5. Samuel J. Tilden High School's School of Law, Politics and Community Affairs
c/o Elliot Salow

6. Six-Year Urban Legal Program - City College

V. John Jay High School
Criminal Justice Careers Program
237 Seventh Avenue
Brooklyn, New York 11215, (212) 788-1514, c/o Ms. Roberta Hunter

VI. Martin Luther King, Jr. - High School - Criminal Justice Program
122 Amsterdam Avenue
New York, New York 10019
(212) 874-1202
c/o Mrs. Patricia Reilly; Paul M. Metl

VII. Other Organizations:

American Bar Association Special Committee on Youth Education for Citizenship (YEFC), 1155 East 60th Street, Chicago, Illinois 60637, (312-947-3960), Staff Director: Norman Gross. YEFC has, since 1971, served as a national clearinghouse and coordinator on all aspects of law-related education. Staff provides consulting services to groups interested in establishing and developing programs, and assists in insuring coordinated efforts between educational systems, bar associations, justice agencies, and other community groups. YEFC has produced a series of publications, listed earlier in this article, and can inform you of law-related projects already underway in your vicinity. It also works with colleges and universities in incorporating law-related education into pre-service teacher education programs.

Correctional Service of Minnesota, Education Division, 1427 Washington Avenue, South, Minneapolis, Minnesota 55404, (612-339-7227), Education Director: David Whitney. The Correctional Service of Minnesota is a private, non-profit organization which offers an extensive collection of law-related resource and curriculum materials for sale and rental. Other activities of the Correctional Service include research into various correctional problems and law-related training for teachers and criminal justice personnel.

Institute for Political/Legal Education (IPLE), Box 426, Glassboro-Woodbury Road, Pitman, New Jersey 08071, (609-589-3410), Executive Director: Barry E. Lefkowitz. This nationally validated Title IVC Project provides consulting in all states for establishing political and legal education programs based on the IPLE model. The IPLE program includes both classroom and field experienes for New Jersey high school students, and has developed a number of curriculum materials.

Law, Education and Participation (LEAP), A National Project of the Constitutional Rights Foundation, 6310 San Vicente Boulevard, Los Angeles, California 90048, (213-930-1510), Executive Director: Vivian Monroe. Provides consulting services to legal and citizenship projects throughout the United States. LEAP, originally funded by the Ford and Danforth Foundations, grew out of the Constitutional Rights Foundation has produced a variety of materials, including its Bill of Rights in Action quarterly, simulation games, Constitutional Rights Series (Benziger, Inc.), and other materials. Affiliated offices are located in Philadelphia and Chicago.

Law in a Free Society (LIFS), 606 Wilshire Boulevard, Suite 600, Santa Monica, California 90401, (213-393-0523), Executive Director: Charles N. Quigley. LIFS was created in 1969 as a project of the State Bar of California. It has developed in-service teacher education materials on each of eight concepts: authority, diversity, freedom, justice, participation, privacy, property, and responsibility. Multi-media kits for K-12 student instruction are now being developed. Consulting services are available.

Law in American Society Foundation, 33 North La Salle Street, Chicago, Illinois 60602, (312-346-0963), Executive Director: Robert H. Ratcliff. The Foundation has conducted intensive summer teacher education institutes in the substantive and pedagogical aspects of law-focused education since 1966. Curriculum materials include the Justice in Urban America series, Trailmarks of Liberty series, Foundations of Justice, and the Law in American Society Journal. The Foundation also offers consulting services to interested groups throughout the country.

National Organization on Legal Problems in Education (NOLPE), 5401 Southwest Seventh Avenue, Topeka, Kansas 66606, (913-273-3600), Executive Secretary: M. A. McGhehey. NOLPE was established to "improve education by promoting interest in and understanding of school law throughout the United States." While it should be understood that "school law" is not the same as "law-related education," the publications of NOLPE can provide information on the status of current legal issues affecting school administrators, teachers, and students.

National Street Law Institute, 412 Fifth Street, N.W., Washington, D.C. 20001, (202-624-8235), Director: Jason Newman. In 1972, "Street Law" was an experimental course in two D.C. high schools, designed to give students practical information about the law. The program has now expanded to include many D.C. junior and senior high schools and is being established in other cities in the nation. It has developed useful curriculum material, including Street Law: A Course in Practical Law and Street Law: A Course in the Law of Corrections (West Publishing Company). Consulting services are available.

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